PLOWDENS

Quæries:

Francis Hargrave.

OR, A

Moot-Book

Of Choice Cases, useful

For the Young Students

OF THE

Common Law:

Englished, Methodized, and Enlarged,

By *H. B.* Esquire of *Lincolns-Inne.*

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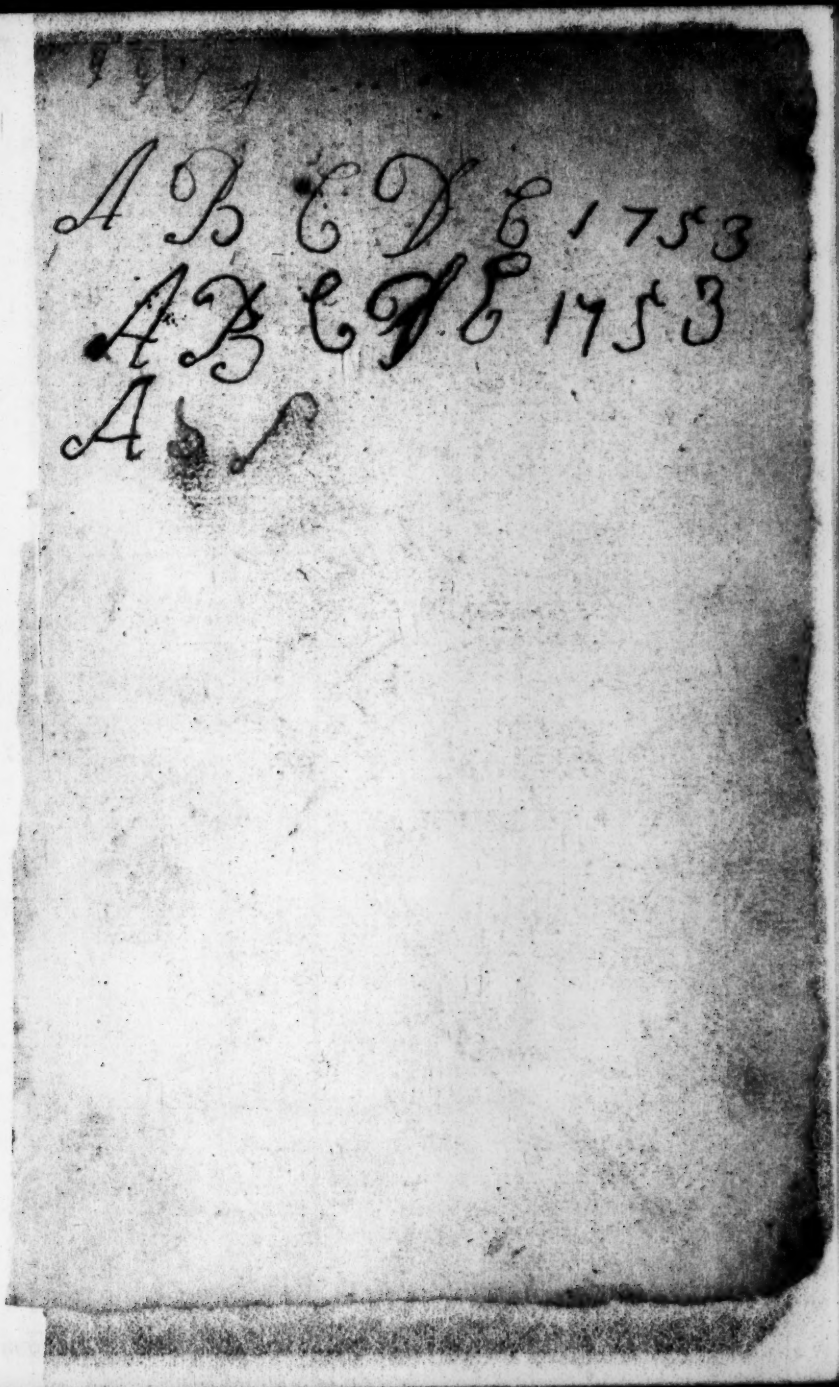
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A

MVSEVM
BRITANNICVM

To the Reader.

THIS *Piece which now entertains your Eie, was originally (if I may ſo term it) a* Rhapſody *of Caſes, wherein the Author did not ſo much conſult his Method, as the choice of his Matter: for as they proceeded from his hand they had no Coherence amongſt themſelves, except ſuch as were voucht to warrant the Reaſons of others: and moſt of them too more naturally referring to their own proper Heads and*

Diviſions, under which it was neceſſary to reduce them, according to that form I had propounded to my ſelf. So that it was not difficult to preſage how great a Trouble muſt be encountred in the Attempt to contrive ſo great a Confuſion into any conſiderable Order. But imagining the effects of my labour might reward my pains, I was eaſily prompted to undertake it for my own private accomodation, and not out of any vain glorious deſign to obtrude it upon the world; for it is very well known I oppoſed a three years importunity to render it publick; yet in fine *conſidering that my own* Reputation *ſtood reſponſible no further, than for giving*

giving it this ſhape into which you now ſee it form'd, I thought I might with the greater freedom comply with the deſires of thoſe who ſo long, and ſo earneſtly, had invited it to the Preſs.

For the work it ſelf, it hath gained a very fair reputation; For I know no book that depends meerly upon the ſtrength of its own reaſon as this doth, that ever was entertained with ſo great an eſteem as this hath been by all perſons that pretend to the knowledge of the Law. But the moſt ſignal mark of its worth was ſet upon it by that perſon who in the Fabrick of thoſe everlaſting Monuments of his Fame, his Reports *and*

Inſtitutes *hath vouchſafed to honour this Treatiſe ſo far as to make himſelf indebted to it for many of his Materials, as will be obvious and viſible to any mans obſervation that hath the leaſt acquaintance with them.*

You will find upon a ſerious peruſall, that few of the Caſes herein contained are any where elſe to be found, unleſſe they were borrowed from hence. That the Author was a perſon of a moſt refined Theory : *And that the work it ſelf is a* Syſteme *of the ſublimeſt ſpeculations in the Law ; wherein there is nothing Vulgar, Trite, or uſuall, and yet every thing uſefull. You will perceive that*

in

in the Caſes that are controverted, as ſome of them be, the Arguments on both ſides are derived from ſuch apt and natural Topicks, and the Conteſt managed with ſo even and equall a ſtrength of Reaſon, that it is often left a meaſuring caſt.

Beſides the Generall Benefit, this Piece will oblige the Students of the Law with a more particular Advantage; for out of it they may furniſh themſelves, not onely with Quæres *and* Moot Points *for their Exerciſes in their reſpective Societies, the want whereof is ſo generally lamented; but they will alſo find many of theſe* Problemes *de-*

bated upon either side. So that they are not onely accommodated with Subjects for their quarrels; but are also arm'd with weapons both offensive and defensive.

It would too much resemble flattery for any man to assert the infallibility of his Treatise in every particular. It is a prerogative to which few books in the Law, I had almost said none, ever arrived; For Littleton *who no doubt, as he writ in the quality of a Father, was most accurate in his Composition, lest the Judgement of his Son might derive a blot from his own pen. And notwithstanding the work is considered*

as

as the most accomplished piece of that nature that was ever yet extant, and his honourable Interpreter makes his name and the Law Equivocall; *Yet he himself shuts up that Discourse with so modest an* Epiphonema, *that it plainly implies his own esteem of it was very different from that which the World hath since bestowed upon it: And the same Learned Commentator, although he was sufficiently positive and peremptory in vindicating the Authority of his Author: yet when he comes to reflect upon his own Labours, he is found to make use of the same* Epilogue *for those Truths which*

depend

depend meerly upon Fancie and Opinion, without the aſſiſtance of any known Principle to ſupport them, as many Caſes in the Law do; have a certain fatal period beyond which they ſeldom ſurvive: and from hence it is, that what was reaſon an Age ſince ceaſeth to be ſo now: And ſome Deciſions have a ſhorter Date; for the Judgements that are given in one Court, and that too upon the moſt ſolemn Debates, are often times Reverſt in another before the breath is cold that pronounced them: For when the Determination of a caſe muſt be fetcht out of its ſelf, there is nothing ſo uncertain and mutable as the Concluſions

that

that are made thereupon. And thus it fares with many of these cases, being govern'd by some particular circumstance which leads them out of the common Road, and distinguisheth them from others. So that when I consider the Niceties that are contained in it, and how critically they are decided, I cannot but admire so many of them are reputed for Law. I confesse you will meet with some passages that are not agreeable to the received opinions of this Age, but most that are, which puts me in mind of a Character that was given it by an ingenuous and intelligent person in the Law, That there are in it multa falla,

falſa, plura vera, plurima ingenioſa.

To conclude, although my particular Intereſt in this piece be ſo inconſiderable, that I cannot rationally affect any reputation by it: Yet if there be any thing that relates to my own endeavours that may accidentally purchaſe a generous reception from any ingennous ſpirit, it ſhall be an ample compenſation for the labour and pains that have been beſtowed upon it. Farewell.

Errata.

Pag. 2. l. 23. after *life* add *the remainder for life*. p. 25. l. 12. r. *parol*. l. 32. add *for*. p. 70. l. 14. dele *not*. p. 75. l. 10. r. *pur auter vye*. l 16. r. *pur*. p. 77. l. 26. for *confirmation* r. *freehold*. p. 85. l. 12. r. *did*. p. 99. l. 5. r. *his* p. 122. l. 21. r. *eſtovers*. 141. l. 6. r. *acre*. p. 160. l. 12. r. *by*. p. 171. l. 9. r. *ſome think*. p. 185. 23. dele *If*. l. 24. for *heard* r. *hard*. p. 23. l. 7. for *deluge* r. *delayd*. p 230. l. 18. for *ſuing* r. *ſaving*. p. 232. l. 7. r. *veſted*. p. 89. for *Diſablement* r. *Diſability*.

An

An Alphabeticall Table of all the Principal Heads contained in this Book.

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Abſence.

IF one in the abſence of *I. S.* diſſeiſeth another to his uſe, or in his abſence ſurrenders to his Steward, or gives goods to him in his abſence; his ſubſequent agreement will make all good. But a diſagreement cannot be in his abſence.

Acceptance.

TEnant in tail grants a Rent-charge in Fee, and then makes a Leaſe for forty years rendring a Rent, and dies. The Iſſue, after his death, accepts the Rent; the Grantee ſhall have the Rent during the Leaſe, and alſo during the life of the Iſſue; though the Leſſee ſurrenders 2. for the Reverſion is diſcharged.

A. makes a Leaſe for life, rendring a Rent, with a clauſe of re-entry; after he has title of entry he accepts the Rent: now he cannot enter for the condition

broken; for, when he accepted the Rent, he did not receive it as a debt; (for an Action of Debt would not lie in that caſe) but as a Rent. And it cannot be a Rent unleſs the Leaſe continues. So if a Woman, Iſſue in tail, or an Infant accept a Rent reſerved by the Husbund, &c. But in the principal caſe, if the Leaſe had been for years, there the Rent is ſaid to be a Debt during the Leaſe as well as after.

A *Fem ſole*, being Leſſee for life, takes Husband, then they make a Leaſe to *I.* for his life, rendring a Rent; the Husband dies, the Wife accepts the Rent in *Pais*; the Leſſor may enter, and ſhe is barr'd of her *Cui in vita*; for, by her acceptance ſhe hath agreed to the forfeiture.

If the Iſſue in tail accepts the Rent, with a *Proviſo*, that it ſhall not be prejudicial to his entry to avoid the Leaſe, yet he ſhall never defeat the Leaſe.

The Husband and Wife make a Leaſe for life, reſerving a Rent; the Husband dies, the Wife accepts the Rent from the Leſſee: ſhe ſhall not avoid the Remainder; for they are both but one Eſtate, and an Agreement cannot be to parcel of an eſtate. So if a Leaſe be made to two by Husband and Wife for their lives, rendering a Rent during the life of one of them:

If

If the Wife, after the death of her Husband accepts the rent, ſhe ſhall not *ouſt* the Survivor.

The Husband and Wife, being tenants in tail, the Husband makes a Leaſe for years, reſerving a Rent, and dies, the Wife dies alſo. *Quære*, if the acceptance of the Rent by the Iſſue will make the Leaſe good?

A man makes a Feofment upon condition; the Feoffee makes a Leaſe for life, and grants the reverſion to the Feoffor. If he hath cauſe to have a Writ of *Right*, or other real action, he cannot have it againſt the Leſſee for life; for the Reverſion is in him by his own acceptance.

A gift in tail is made to the Donee, and the Heirs males of his Body: and for want of ſuch Iſſue, the remainder to him and the Heirs females of his body; the Donee makes a Leaſe for years, reſerving a rent, and dies without Iſſue male. If the Heir female accepts the rent, ſhe ſhall be bound; for the Leaſe iſſued out of both the eſtates. But if the Heir male had made the Leaſe, the Heir female cannot make it good by acceptance.

If Tenant in tail dies, his Heir within age, and the Guardian avoids it during

the minority; yet the Heir at his full age, by his acceptance, may affirm it. So if the Wife of Tenant in tail avoids a Leaſe by a Recovery in *Dower*; yet, after her death, if the Iſſue accepts the Rent, he hath made good the Leaſe.

Adminiſtrator.

AFter the death of the Inteſtate, *A:* gets the goods, and gives them to *B:* and after Letters of Adminiſtration are granted to *A:* he ſhall not take the Goods out of the poſſeſſion of *B:* for the Law ſaies, by the firſt taking the Goods, he had them to the uſe of the Inteſtate; for he ſhall be charged as Executor *de ſon tort.* And he is to have the Goods in the ſame capacity. But it is otherwiſe if *A:* takes the goods of *B:* *tortiouſly* and gives them to *C:* and then *B:* makes *A:* his Executor. But in the principal caſe, if *A:* releaſeth to a Debtor of the Inteſtate after adminiſtration committed to him, he may have an Action; for of a *choſe in action* a man cannot gain a poſſeſſion. If a Leaſe is made to begin at Eaſter, and before Eaſter *A:* grants it over, and before Eaſter the Leſſee dies, and *A:* takes adminiſtration to the Leſſee, and grants it over to another, the

the ſecond Grantee ſhall enjoy it. If a Rent charge is granted for years, and *A.* compels the Tenant to pay it to him, and then he grants it over, and takes Letters of Adminiſtration to the firſt Grantee, he ſhall avoid his own Grant: for the poſſeſſion which he had uſurped ſhall not be eſteemed the poſſeſſion of the ſame term; but it ſhall be ſaid a voluntary payment of the Tenant: for none can be ſaid to have the Rent but he that had right to it.

Advantage.

THree joint-tenants, one gives his part to his Daughter in Frank-marriage to one of his Companions, and makes Livery. This is a good Frank-marriage; for, though one Joynt-tenant cannot enfeoffe another, yet his Companion, and a ſtranger he may; becauſe 'tis for the *Advantage* of a third perſon; and the Livery being made to the third perſon ſhall veſt the eſtate in both, 7 *H.* 6. 3. 21 *H.* 7. 41. But others think the contrary: for, the Husband cannot take it immediately from his Companion: therefore, for him it is void, and good for the Wife. As if a Feofment be made to a ſtranger, and the Wife of the Feoffor.

The Husband is bound in a Statute, and after he and his Wife levy a Fine of the Wife's Land to *A:* the Husband dies. The Statute ſhall not be extended during the Wife's life; for nothing paſſed from the Husband, but the eſtate which he had in right of his Wife: And *A:* ſhall have the ſame *Advantage* which the Heir of the Wife ſhould have had.

Tenant in tail enfeoffs one Daughter within age, and dies: ſhe is remitted; but the other Daughter ſhall not take *Advantage* of it.

Agreement.

IF I diſſeiſe one to the uſe of my ſelf and *A:* who after *Agrees* to the diſſeiſin, we are joint-tenants, 21 *Aſſ.* 49. If one ſiſter in tail enters upon the Diſcontinuee of her Father, claiming to her and her ſiſter; and the Diſcontinuee *ouſts* her, and ſhe recovers in an *Aſſiſe*, the other ſiſter ſhall have the moyty by her *Agreement*. But if I diſſeiſe one to the uſe of *A.* after twenty pounds receeived by me of the profits; or to the uſe of my ſelf for life, and after to his uſe in fee; there he ſhall have nothing by his *Agreement:* for I cannot apportion the wrong. If I diſſeiſe my Tenant for

for life to the uſe of *A:* he ſhall have but a Free-hold by his *Agreement.* If the Iſſue in tail within age, by covin commands *A:* to diſſeiſe the Diſcontinuee of his Father. *A:* diſſeiſes him to the uſe of *B:* for life; and after to the uſe of his own right Heirs. *B:* agrees, *A:* dies, *B:* dies, the Heir of *A:* enters, and enfeoffs the Iſſue, he is remitted becauſe of his minority.

An Agreement cannot be to parcel of an Eſtate.

Aid.

IF Coparceners make partition, and one has the Seignority, and a Tenancy eſcheats, and ſhe is impleaded of that; ſhe ſhall not have *Aid* of the other Coparcener; for Aid cannot be granted but of Land deſcended.

If one Acre is given to the eldeſt Daughter in Frank-marriage, and another in fee deſcends to the youngeſt; if ſhe ſhall have *Aid* is the queſtion?

Alien.

IF a Reverſion be granted to an *Alien*, and after he is made a Denizen, and then

the Tenant atturns, he ſhall not take to his own uſe.

A Leaſe for years is made to an *Alien* upon condition to have Fee; he is indenized, and hath Licenſe to purchaſe, and then performs the Condition. The King ſhall not have the Fee, for it hath not a Relation as to the deveſting of the Fee, further than the performance; although that for Charges and Incumbrances it hath a larger Relation.

If an *Alien* Diſſeiſor be made a Denizen, the King ſhall not have the Land, if the Diſſeiſee doth after releaſe unto him; but if an *Alien* had been the Feoffee of a Diſſeiſor, it had altered the caſe, for it is a new purchaſe in one caſe, and but an extinguiſhment of a right in the other: and it ſeems that the Iſſue of ſuch an *Alien* born within the Realm ſhall be in ward for Land deſcended to him on the part of the Mother; during the life of the Alien, if he be not Heir apparent. And a man born in *England* cannot make himſelf heir in ſpecial tail to a *Baron & Fem*, whereof one is an *Alien*, neither ſhall he have an Appeal for the death of ſuch a Father or Mother *Alien*.

If Land be deviſed to an *Alien*, and he is made a Denizen, and after the Deviſor dies,

dies, there he ſhall take by the Will; for all takes effect by the death of the Diviſor. But in the caſe above, if when the Office is found the Leaſe ſhould be adjudged in the King from the beginning, then it takes away the Condition, and then he could not acquire a fee by his performance.

If a man ſeiſed in fee marries an *Alien*, and makes a Feofment, and ſhe is made a Denizen, and the Husband dies, ſhe ſhall not recover her Dower.

Annuity.

IF an *Annuity* be granted for the life of *I.* and the Grantee releaſeth all Actions of *Annuity* to the Grantor; it ſeems he ſhall not have an Action of Debt for the arrerages after the releaſe, and after the death of *I.* for when they were due he had no remedy.

If a Rent charge is granted out of Land in Fee, the Heir of the Grantee ſhall have his election to bring his Writ of *Annuity*, and ſo ſhall the Executor of the Grantee, if the Grant were for years. And if the Wife brings Dower, the Heir ſhall not ſay, that he will take it as an *Annuity*; for it muſt be determined by the bringing of his Action:

Action: and if she be once endowed, the Heir shall not have an *Annuity* of the other two parts; for his Writ ought to be grounded upon the Deed, and that for all, or for none: for there can be no apporcionment of an *Annuity*, or personal thing.

Appendant.

IF an Advowson be *Appendant* to a Mannor, and the Advowson is granted to one for life, and then the Grantee is enfeoffed of the Mannor *cum pertinentiis*; yet the Free-hold of the Advowson is not *Appendant*. But if the Grantee had regranted it to the Grantor, it had been *Appendant*. But if *A.* makes a Lease of his Mannor for life, saving the Advowson, and after grants the reversion of the Mannor *una cum Advocatione*, the Advowson shall never be Appendant to the Mannor again.

Husband and Wife make a Feoffment of the Mannor of the Wife, to which an Advowson is Appendant; the Feoffee makes a Feofment of one Acre with the Advowson; the Husband dies, the Wife recontinues the Mannor; she shall present without any recontinuance of the Acre: for

for it was not appendant to the Acre; for if a man makes a Feofment of an Acre, parcel of a Mannor, *cum pertinentiis*, nothing of the Advowſon, which is appendant to the Mannor, paſſes.

If one hath a Mannor, and makes a Leaſe for life of all the Mannor, except one Acre; now the Fee of the Acre is divided from the Mannor during the Leaſe for life, but after the determination of the Leaſe it ſhall be appendant again.

Apporcionment.

TWo Joint-tenants by Twelve-pence, the one grants what belongs to him upon condition; the Lord grants the ſervices of one, and Atturnment is had: the Condition is broken, the Grantor enters; he ſhall hold by Twelve-pence alſo, for by the Grant no *Apporcionment* is made, and then by the Grant Twelve-pence paſſed, and Twelve-pence remain.

If tenant for years enfeoffs the Lord of one Acre, the Seignory ſhall be *Apporcioned.*

A Rent is granted in Fee out of Land in Borough-Engliſh, and at Common Law; the Grantee dies, leaving two Sons, the eldeſt ſhall have all, for the rent

rent being entire cannot be *Apporcioned*, and the eldeſt, being Heir, ſhall have all.

If a Rent charge be granted in Fee, and the Grantee dies, and his Wife recovers her Dower of the third part of the Rent, the Heir cannot have an *Annuity* of the two parts; for it muſt be for all, or none, for it cannot be *apporcioned*.

If the Obligor for twenty pound makes the Obligee his Executor, and leaves but ten pound, he may retain that ten pound, and ſue the Heir for the reſt. So that a Duty may be *apporcioned* by act in Law.

If a Leaſe be made of two Acres for years rendring a Rent, and the Reverſion of one of them is granted over, the Rent ſhall be apporcioned: for as the Contract is made in reſpect of the Reverſion, ſo it ſhall be ſevered in reſpect of the Reverſion. If a Leaſe be made of two acres, rendring a Rent, with a Clauſe of re-entry into one for not payment of the Rent, it ſeems reaſon that the Rent ſhall be apporcioned: And ſo if the Condition had been that he ſhould have fee in one Acre. And if a man makes a Leaſe of a flock of ſheep, and land, rendring a Rent, if either of them be evicted, the Rent ſhall be apporcioned. But if I have a term of twenty years, and

I grant it over with a ſtock of Cattle, rendring a Rent by Indenture, and if the rent be arrear that I ſhall diſtrein; there, if the ſtock be recovered, the Rent ſhall be apporcioned; for before my Recovery my remedy was by diſtreſs, and not by Action of Debt, and ſo no apporcionment for a Chattle deveſted.

If one enters lawfully upon Tenant for life, by title *Paramount*, into one Acre, for a condition broken, though he has the ſame title to all the Land; or enters into one Acre by a title upon an alienation in *Mortmain*, or conſent to a *Raviſher*, *&c.* or if the Leſſor himſelf enters into one Acre, by reaſon of a Condition broken, or becauſe he was within Age at the time of the making the Leaſe, and peradventure part is good by Cuſtome which enables an Infant to make a Leaſe; or if the Leſſor takes a Surrender of parcel, or recovers parcel in *Waſt.* 21 *H.* 6. 48. or if one Joint-tenant enters, for a Condition broken, into his moity: in all theſe caſes the Rent ſhall be *apporcioned.* But if the Land at the time of the Leaſe was diſcharged of a Rent, which after revived, ſo that the value of the Land is impaired to the Leſſee, there the Rent ſhall not be apporcioned; for the Land out of which

which the Rent iſſues, remains intire to the Leſſee. But if one hath title to enter upon his Tenant for life into twenty Acres in two ſeveral Counties, and he enters but into one Acre only, *Quære* if the Rent ſhall be apporcioned?

There is no apporcionment upon the Grant of a Seignory, but only by the Feofment of the Tenancy.

If I diſſeiſe one to the uſe of *A.* after twenty pounds advanced by me out of the profits, or to the uſe of my ſelf for life, and after to his uſe in fee; he ſhall have nothing by his agreement, for the wrong cannot be apporcioned.

If a man has *Common Sans Number* granted to him in tail out of two Acres, and he purchaſeth one Acre and dies, which deſcends to his Iſſue in tail, there can be no apporcionment; for either it is gone in all, or revived in the reſidue for all; for *Common Sans Number* is a thing intire which cannot be ſevered. But if it were *Common certain* it were otherwiſe. But being the Common was intailed, the Act of the Tenant in tail ſhall not prejudice the Iſſue, where a rent is ſuſpended in part there can be no apporcionment during the ſuſpention, but afterwards there may.

If

If the Tenant holds of the Lord by Fealty, and twenty ſhillings of the Mannor of *Dale*, and the Lord makes a Leaſe of the Mannor, reſerving forty ſhillings with Atturnment, and after releaſeth to his Tenant all his Right. If the Rent of forty ſhillings ſhall be apportioned? Firſt it ſeems by the Releaſe the Tenant is diſcharged of twenty ſhillings, as well againſt the Leſſee as againſt the Leſſor, becauſe now the Tenant holds it of the *Lord Paramount*, and ſo not of the Leſſee. Alſo the Rent of forty ſhillings was as well payable for the ſervices as for the *Demeſns*, although a Diſtreſs cannot be taken in the Demeſns. But yet being the twenty ſhillings is loſt, not by a *Title Paramount*, but by the Leſſor, if now it ſhall be apportioned or not? 21 *H.* 7. 6.

There be three Daughters, two by one *venter*, and the third by another. The youngeſt being ſeiſed of three Acres of equal value, grants a Rent of three ſhillings to the Father in fee, and makes a Feoffment to the ſecond Daughter of one Acre, who dies without Iſſue, ſo that it deſcends to the eldeſt, the Father dies: by this deſcent the Rent ſhal be apporcioned. If a man hath a Rent of twenty ſhillings out of twenty Acres of equal value, and

one

one Acre descends to his Wife, the whole Rent is suspended; for it cannot be apporcioned when he is seised of part of the Land in *auter droit.* But if she dies, and he is tenant by the *Curtesie*, it shall be apporcioned; for the Land continues in him by act in Law, which is equal to a descent: and if the Rent be in tail, and part of the Land descend in fee; or if the Rent be in fee, and part of the Land descend in tail, there shall be no apporcionment.

Arrerages.

IF a Seignory be granted for years, upon Condition to have Fee, and after the Fee is vested by the performance of the Condition; the Arrerages due before are extinguished, for the term is extinct.

Assent.

IF the Patron and Ordinary give leave to the Parson to grant a Rent in Fee, it will bind the Successor, 7 *H.* 4. 18. for an Assent may be before the Act is done.

If the Patron assent to the charge of the Parson upon condition, it is good: but if he had the Patronage but for life, &c.

after

after his estate ended, the Assent will not bind the second Patron.

If a Parson be Patron of a Church, and the Parson, with the Assent of the Ordinary, grants a Rent Charge, or makes a Lease for yeares; the Assent will not make it to endure, no more than the Assent of a Bishop who is Patron, without the Assent of his *Chapter*. Nor the Assent of Tenant in tail, or for life, who is Patron cannot make it endure for ever.

If the Bishop grants in Fee to the King by Deed, confirm'd by the Dean and Chapter, and the Deed of the Bishop is inrolled, and the other not, it seemes it shall bind the Successor; for the Assent is to the Deed of the Bishop, not as a Confirmation. As the Abbot may make livery where it is the Deed of him and his Covent, so in this case the Bishop may deliver the Deed of him, and of the *Dean and Chapter*.

Assets.

LAnd is given to two Women *Quam diu simul vixerint*, the remainder to the Heirs of her that first dies: One hath Issue, and dies; it seems this remainder shall not be Assets in the Heir

in a *Formedon*, or *Debt*; for the remainder was never in the Mother; for it commenced after her death. But if a Rent Charge be granted to *I.* to commence after his death, 'tis otherwise, for the Heir takes it by descent.

If Executors have a *Villain* in right of their Testator, and enter into Land purchased by him, it shall be Assetts although they have a Fee, as Land descended to the Heir shall be Assetts to a Chattle, *viz.* to a Debt of a Stranger.

The Grantor of a Rent Charge in taile einfeoffes the Grantee of the Land, who makes a gift in tail of the Land, rendring so much of the Services as he pays over to the *Lord Paramount*: it seems that these Services shall be Assetts in the Heir; for they are particularly reserved for the Land.

Assignee.

IF a Feoffment be made with Warranty to the Feoffee, his Heirs and Assigns, if he makes a Feoffment over, and the second Feoffee re-enfeoffes the first Feoffee, he shall vouch; for he may be Assignee of his Father, being he does not claim as Heir. And the

Lord

Lord by Eſcheat, or Mortmain, or of a *Villaine*, or who enters for a Conſent to a Raviſher, ſhall not be ſaid Aſſignees, and yet they ſhall *Rebutt*.

If Tenant in tail be with *Warranty* to him, his Heirs and Aſſignes, his Feoffee in Fee ſhall not be ſaid Aſſignee; for he hath no part of the Eſtate tail.

If Land be given to One and his Aſſignes for ever, and it is ganted to him and his Aſſignes, that they ſhall have twenty Load of *Wood* yearly for ever, Tenant for life grants over his Eſtate, and dies; the Aſſignee ſhall not have the Wood, becauſe his Eſtate is now determined.

Attainder.

A. Dyes, leaving two Daughters, the one is attainted of Fellony, a Leaſe is made the remainder to the right Heirs of A. the other ſhall not take the Daughter (that was attainted) being living, for one is not Heir alone; but if the Father dies ſeiſed of Land, a moity ſhall eſcheat.

If the Meſne grants the Meſnalty upon condition, that if the Grantee pays a certain ſum of Money to the Grantor, that he ſhall have Fee; and

before the Day the Grantor is attainted of Felony and executed; yet the Grantee ſhall have Fee, for the Condition is become impoſſible to be performed by the act of the Grantor. But if a Jointenant makes a Leaſe for five yeares, upon Condition, that if the Leſſee does ſuch an Act, he ſhall have it for twenty years; and before the day the Leſſor dies: now the Condition is void by the Surviver.

If a man grants a Rent Charge to begin at a day to come, and before the day the Grantor is attainted of Felony, yet the charge is good.

If a Remainder be limited to the right Heirs of *A.* who hath a Daughter, and dies, who enters, and after a Son is born, and attainted; yet the Remainder ſhall not be deveſted out of the Daughter.

The Son endowes his Wife *Ex Aſſenſu Patris*, the Son is attainted of Felony, it ſeems that the Wife ſhould not retain her Dower, for 'tis the Dower of the Son, for ſhe claimes it from the Son, and if ſhe brings a writ of Dower of it, *Ne unques accouple in loyall Matrimony* is a good Plea, and if there had been a diſſeiſin of it, a Collateral Warranty ſhall be no bar to the Wife, for ſhe pretends no Title to

it

it but by the death of her Husband, and then the Warranty deſcends before her Title, for if it deſcends after her Title it ſhall be a good bar. And if ſhe, after her Dower ſo aſſigned, be attainted of Felony, and after hath her *Charter of pardon* for her life, and after the Husband dies, ſhe ſhall retain her Dower; for her Intereſt in it commenced after her Pardon. And yet by her Attainder ſhe forfeited all her Inheritance, Free hold and Chattles Real.

If an Attainted perſon be enfeoffed to the uſe of another, the poſſeſſion cannot veſt in the other, but muſt eſcheat; but he which is Attainted may be an Atturny.

Grandfather, Father, and Son, the Father is Attainted of Treaſon and dies, and after the Grandfather dies ſeiſed of Land, the Lord of whom the Land is holden ſhall have it by Eſcheat, and not the King: For the Father had it not at the time of Attainder; And being that the Grandfather dyed without Heir the Land ſhall Eſcheat. So it is if the Father be Attainted of Treaſon, and the Grandfather dies leaving the Father.

The Iſſue in tail is Attainted of Felony, and is pardoned, and his Father dies, and a Stranger having cauſe

of Action; againſt whom he ſhall bring his Action, is the *Queſtion?* Some ſay that the Donor hath the Free-hold in Law; as if Tenant in tail dies leaving his Wife *Enſeint.* Others ſay there is none againſt whom the Action may be brought; as if Tenant for Life grants over his Eſtate to *B.* who dies, now before Entry there is none againſt whom the Action may be brought.

Tenant in tail makes a Feoffment within Age, and is Attainted of Felony, his Iſſue ſhall not enter, for he is diſabled in blood to take advantage of the Infancy, becauſe the Infant had no Heir.

A. Covenants upon a Marriage to ſtand ſeiſed to the *Uſe* of another, and before the Marriage the Covenantee is Attainted of Felony, yet upon the Marriage the *Uſe* will riſe; as a Leaſe for life with a Condition of *Accruer*, if the Leſſor be Attainted, yet the Eſtate ſhall enlarge.

Tenant is tail is diſſeiſed, and releaſeth to the Diſſeiſor with *Warranty*, and then is Attainted of Felony, and hath a *Pardon* and dies: this is a *Diſcontinuance*; for if he had purchaſed Land after his *Pardon*, it ſhould deſcend to his Heir; then the *Warranty* being

being in *Esse* at the time of his death, there is no Impediment but that it ſhould deſcend. But if Tenant in tail, who hath a *Warranty* annexed to his Eſtate, be Attainted of Felony and Executed, his Iſſue ſhall not Inherit the *Voucher* by reaſon of the Warranty, although he hath the Land; for the Warranty is out of the *Statute de Donis*, &c. which ſpeaks of *Lands and Tenements*. But ſome think that by the Equity of the Statute it is preſerved as well as *Charters*, 21 *H.* 6. 2. *p. Markham & 9 H.* 6. 60. *Cott. p. Charters.*

Tenant in tail makes a Leaſe not warranted by the Statute, and dies: the Iſſue accepts the Rent, and is Attainted of Treaſon; if the King ſhall avoid it, *Quære?*

If the Grandfather be Tenant in tail, and the Father is Attainted of Treaſon, and Executed, yet the Son ſhall Inherit as Heir to the Grandfather.

If *A.* commits Felony, and the Lord grants his Seignory, and after *A.* makes a Feoffment upon Condition, and is Attainted, and hath a *Charter of Pardon*, and after re-enters for breach of the Condition, and dies. If an Occupant ſhall have the Land, the Iſſue, or the Lord, is the *Queſtion?*

Atturnment.

TEnant in tail holds by Rent, the Donor grants the ſervices, the Donee atturns; nothing paſſes, for the Rent cannot paſſe, but as a *Rent Service*; and the *Atturnment* ſhall not prejudice him, for the Law will not have Land to be holden of two ſeveral perſons.

Tenant for life grants a Rent in Fee, and then he and the Reverſioner join in a Feoffment; by the delivery of the Deed the Tenant did *Atturn*

If the Lord grants his Seignory by Fine, and before *Atturnment* the Tenant makes a Feoffment of the Tenancy; if the Feoffee *Atturnes* it is well enough, and yet he is not compellable: So if Tenant in tail *Atturns* 'tis good, and yet he was not compellable.

If a Leaſe be made for years, and the Leſſor makes a Leaſe to another for life to commence after the Term: *Atturnment* will not make the ſecond Leaſe good; for the Freehold cannot paſſe out of any one who hath a greater Eſtate, reſerving to himſelf a Meſne Eſtate.

If a man makes a Leaſe of a Mannor which is ten pound in Demeſnes, and ten

ten pounds in Service, rendring twenty pound Rent, if the Tenants do not *Atturn* he ſhall pay but ten pounds in Rent, being he hath no remedy to compell them to *Atturn*.

Tenant for life of three Acres, and the Reverſion of them is granted, and Tenant for life ſurrenders one Acre to the Grantee that countervails an *Atturnment* for that Acre only; for it is but an *Atturnment* in Law, but an *Atturnment* for one Acre by *Parcell* is good for all; So if he had *Atturned* to one Grantee it had been good ro both. If one brings a *Quid Juris clamat*, and pending his Writ he enters into one Acre, he hath not abated his Writ for the *Remnant*.

If a *Fem-ſole* makes a Leaſe for life, and then grants the Reverſion to two, one dies, and ſhe marries the other. Tenant for life pays a penny to the Bayliffe, of the Grantee in the name of *Atturnment*, and dies, the Husband enters and makes a Feoffment and dies, ſhe brings her *Cui in Vita*.

If a Seignory be aſſigned in Dower *Ex aſſenſu Patris*, there needs no *Atturnment*.

A Reverſion is granted by Deed to a man and a *Fem ſole*, they marry, the Tenant atturns, the particular Eſtate life

life determines: the Husband and Wife ſhall take it by moities; for the *Atturnment* is grounded upon the Deed, and reduces the Inheritance according to the courſe of Deed. If a Reverſion be granted to on Infant, and *Atturnment* is had at his full age, yet when he is in poſſeſſion he may diſagree to the Eſtate, being the grant was during his Infancy, which is the Principal.

A Reverſion is granted to one for life, and before *Atturnment* it is granted to him in Fee; the Tenant Atturns, the Grantee may chooſe which Eſtate he will take. But if a Reverſion be granted to one, and after to another, and the Tenant comes to both, and ſays I atturn unto you, neither of them ſhall take for the incertainty. If a Reverſion be granted to one and his Heirs, and after it is granted to him and his Succeſſors, and the Tenant *Atturnes*, *Quære* in what capacity he ſhall take? If the Reverſion of black Acre or white Acre be granted, *Quære* if *Atturnment* will make it good? ſome think it is void for the incertainty.

A. makes a Leaſe for life and grants a Rent out of the Reverſion, if the Grantee Grants it over, the Grantor ought to *Atturn*, and not the Tenant for

for life; for it hath no Relation to him: for a Releaſe made to him by the Grantee will not extinguiſh the Rent.

The Reverſion of Tenant for life with the Rent is granted; Tenant for life grants his Eſtate to another, to hold of the Grantee: this is an *Atturnment*; for when he granted it to hold it of him, the Tenant for life took notice of the Grant.

If an *Atturnment* be upon Condition, which is broken, yet the Reverſion is not deveſted, for he doth not claim the Reverſion from him that atturned, and an *Atturnment* cannot be upon Condition.

If the Reverſion be granted to Tenant for life and another, or a Signory be granted to the Tenant and another, this Acceptance ſhall be a ſufficient *Atturnment*. But if there be two Tenants for years, and the Reverſion is granted to one of them, *Quære* if he takes but a moity without *Atturnment* of his Companion, for the Jointure is ſevered by the Grant.

If a *Feme* Tenant for life takes Huſband, who *atturns* to the Grantee of the Reverſion, and after is devorced, yet the *Atturnment* ſhall bind the wife, and if a Feoffee upon condition *atturns* to the grant of a Seignory, and the Feoffor

Feoffor enters for the condition broken, yet the *Atturnment* ſtands good. If a *Mulier* Atturn to the grant of a Signory, though the *Baſtard* dies ſeiſed, ſo that the *Mulier* can never be Heir, yet the *Atturnment* remaines good. If the Reverſion of Tenant in tail, or for life, the remainder for life is granted, and the Iſſue in tail, or he in Remainder Atturn, (having nothing but the poſſeſſion in Law) it is void. But he that hath but a poſſeſſion in Law may *Atturn* to the grant of a Seignory, for none can *Atturne* but he that was Tenant at the time of the Grant.

The Lord grants the Seignory, the Tenant is diſſeiſed, and after Atturns, that is good; But if the Lord grants the Rent ſaving the Seignory, and ſhe is after diſſeiſed and *Atturns*, that is void; for it is now a *Rent Seck*, in which there is no *Attendency*, but a Charge of the Land. If a man grants a Rent reſerved upon a Leaſe for Life, ſaving the Reverſion, that is a good *Rent Seck*, if the Tenant Atturns.

Grandfather, Father and Son Jointenants, the Grandfather grants a Rent Charge in Fee to the Father, upon condition, who grants it to his Son and his Wife; the Grandfather releaſes

releaſes to the Father and Son, the Son dies, the Condition is broke, the Grandfather claims the Rent; the wife ſhal hold it diſcharg'd of the Condition, if the poſſeſſion of her Husband ſhall be an *Atturnment* in Law; but it ſeems it is not, for his *Atturnment* alone without the *Atturnment* of the Father (who was a Jointenant) is not ſufficient, for both ought to *Atturn*. But if the Grandfather ſhould have the Rent by the Condition, then he ſhall be in of his own Grant, and be both Grantor, and Grantee. But if the Father had died in the Life of the Son, then that had been a good *Atturnment in Law*.

Avoid.

TEnant in tail makes a Leaſe for forty years, and dies; the Iſſue in tail marries and dies, if ſhe ſhall *avoid* the Leaſe by her Recovery in Dower *Quære?*

If Tenant in tail makes a Leaſe for years to commence at *Eaſter*, rendring a Rent, and dies; the Iſſue in tail enters and makes a Feoffment before *Eaſter*, the Feoffee ſhall not *Avoid* the Leaſe, for the Leaſe was not avoided by the Entry of the Iſſue. So if *Baron & Fem* make a Leaſe to begin, &c. and

and before the time the *Baron* dies, and the *Fem* makes a Feoffment, the Feoffee ſhall not *avoid* it. So if an Infant makes a Leaſe *ut ſupra*, and before the time (he being within age, or at full age) makes a Feoffment, the Feoffee ſhall never *avoid* the Leaſe, &c. But many are of a contrary opinion; for they ſay that an Infant, or Iſſue in tail, by their own, or the Acts of their Anceſtors, ſhall never be prejudiced by any thing that is *Executory*; for if he ſhall not *avoid* it by his poſſeſſion before the commencement of the Term, he hath no means to Avoid it, &c. before, &c. But it is cleer enough, that if Tenant in tail dies after he hath diſcontinued, and the Diſcontinue makes a Leaſe for yeares to begin *ut ſupra*, and dies; the Heir in tail, being his Heir who enters, and he enters and makes a Feoffment, there the Leaſe is *avoided*, becauſe the Iſſue is remitted, and hath another Eſtate than the Diſcontinuee had, and not any privity of that Eſtate which is avoided.

If an Infant delivers a Writing, as an *Eſcrowle*, to be delivered as his Deed when he arrives at his full age, and receives the Money of the Party to whoſe uſe the Deed was to be delivered,

livered, yet he ſhall *avoid* the Deed.

If Husband and Wife make a Leaſe, or grant a Rent Charge in Fee out of the Wives Land, and then they joyn in a Fine to *A.* he ſhall not *avoid* the Leaſe or Charge, becauſe they are *executed*, but otherwiſe of things *executory* as a Statute, &c. before Execution.

Avowry.

LAnd is given to one *Habendum*, a Moity to him and his Heirs, and the other Moity to him and the Heirs of his body, the Remainder to his Right Heirs; the Land is holden by two pence, the Donee dies without Iſſue, and his brother enters, ſeverall *Avowries* muſt be made upon him, one for one penny, and another for the other. But if Land be given the one Moity in tail, the other in Fee, there ſhall be but one *Avowry*, for that inures as a joint Gift, but in the firſt caſe it did inure ſeverally at the Beginning. If there be three Jointenants, and one Releaſes to one of his Companions, and he to whom the Releaſe was made hath the part of the other by Survivor, yet for a third part one *Avowry* ſhall be made upon him; In the

the principal case the Fee simple was never severed, if it had, the Donee should hold each Moity by two pence a peice, and the *Avowry* shall be made upon the collateral Heir for two pence in one Moity.

A. makes a Gift in tail of one Acre which he holds in *Socage*, and of another which he holds in *Chivalry*, saying nothing, the Donor shall make severall *Avowries*, although he hath but one Reversion; for the Law makes the *Avowry* in respect of the tenure over, and the severall Acres must severally escheat.

If a Disseisor makes a Lease for life and dies, it seems the Lord is compellable to *Avow* upon the Heir of the Disseisor. But if he had made a Gift in tail, and the Donee dies and his Issue enters, there he shall not *Avow* upon the Donor.

If one Parcener makes a Lease for life, yet the Lord shall *Avow* upon them both, but if one Jointenant makes a Lease for life, the Lord must make severall *Avowries* upon them, for the Jointure is severed. If there be two *Fem Parceners Mesnes*, and one marries the Tenant, yet the *Avowry* of the Lord is not severed. But if there had been two Jointenants, it had been other-

otherwiſe, for by the Marriage the Moity of the *Meſnalty* is ſuſpended, and cannot be in Jointure with the other Moity which is not in *Eſſe*. And if one holds a Mannor of another, and makes a Feoffment of all, except one Acre, now the Fee of the Acre is diſappendant from the Mannor, and the Lord ought to make two ſeverall *Avowries*.

Authority.

IF I deviſe that my Executors ſhall ſel my Land, and one ſells one Moity, and another the other; this is not warranted by the *Authority*, for it was to be jointly executed; As a Letter of Atturny to two to make Livery, it ought to be performed jointly. But if the Land had been deviſed to them, then ſuch a Sale had been good, for they had an Intereſt, and the intent was performed. If one makes two Atturnies *conjunctim*, or the King makes two Commiſſioners of *Oyer & Terminer*, if one dies, the *Authority* of the other is determined, 35 *Aſſ. p.* 1.

Two Jointenants make a Feoffment with a Letter of Atturny to deliver *Seiſin*, and the one delivers *Seiſin* in perſon, this is a Countermand of the

whole Livery, for the Authority was not ſeverall for either of them, but joint for both, and therefore being countermanded for one it ſhall be void againſt the other.

Barr.

IF the Plaintiffe be Barr'd in an *Entry ſur Diſſeiſin*, yet he ſhall have a *Ceſſavit*, if he had cauſe to have it at that time, for it is another Title. If the Heir brings a *Formedon in Deſcender* and is nonſuite, *Quære* if he ſhall enter, becauſe he had Title of Entry for a Condition broke. If a Woman hath cauſe of Dower of one and the ſame Acre, as Wife to *A.* and *B.* If ſhe be barred of it, as Wife to *A.* yet ſhe ſhall have it as Wife to *B.* If *Baron & Fem* make a Feoffment upon Condition, if the Wife be barr'd in her *Cui in vita*, yet ſhe may enter for the Condition broken. 27 *E.* 3. 55, 56. p. 72.

Bargaine & Saile.

A. *Bargains and Sells* Land to *B.* and after they both grant a Rent Charge to *C.* and then the Deed is inrolled, the Rent is gone; for it is the

grant of *A.* and the Inrolment hath relation to the Delivery, which avoids the grant, though it was the Confirmation of *B.* for he had nothing at that time.

The Iſſue in tail within age takes from the Diſcontinuee a *Bargaine and Sale.* He ſhall not be remitted; for he is in, by reaſon of the *Poſſeſſion conveyed to the Uſe*, and ſo he muſt have it in the ſame Degree as he had the *Uſe.* And ſo if he were within age at the time of the *Bargain & Sale*, and the other dies, and after the Deed is Inrolled, he ſhall not be Remitted. If the Biſhop makes a grant to the *K.* in fee, confirm'd by the Dean and Chapter, and the Deed of the Biſhop is Inrolled, and the other not, it ſhall bind the Succeſſor; for it is but as an Aſſent, and not a Confirmation.

Baron & Fem.

IF a Fem Leſſee for life marries, and ſhe and her Husband make a Leaſe for life, rendring a Rent, and the *Fem* avowes, for the Rent after the death of her Husband, the Leſſor may enter; for by her Avowry ſhe hath agreed by matter of Record, and ſo it had been if ſhe had entred for a Con-

dition made by her and her Husband.

If *A.* infeoffes his Wife and a Stranger, it is void as to the Wife, and good to the Stranger, though the Livery were made to the Stranger in the name of both. Three Jointenants, and one gives his part with his Daughter to his Companion in Franckmarriage, and by the ſame Deed releaſes to them in Frankmarriage, and makes Livery, this is a good gift in Franckmarriage by ſome, for notwithſtanding one Jointenant cannot enfeoffe his Companion, yet he may enfeoffe his Companion and another, and the Livery made to the other ſhall veſt the Land in both, and that is for the advantage of a third perſon. As in *Gaſcoignes* caſe, 7 *H.* 6. 3. It was not a ſurrender for the advantage of the third; Neither in 21 *H.* 7. 41. for the advantage of the Husband; So it ſhall not be void here for the advantage of the third perſon. But others are of a contrary opinion, and they ſay the Husband cannot take it immediately from his Companion, and therefore it is void as to him, and good as to the Wife, & the other part of the Deed, *viz.* the Releaſe, will inure to the Husband. And here both the things make

make the Frankmarriage good, for the *Livery* and the Deed may be delivered both at one time.

If the Husband be Tenant for life, and the Reverſion be granted to him and his Wife, the Fee remaines in them in Jointure; for there be no Moities between them. Land is let to *Baron & Fem Habendum*, the one Moity to the Husband, the other to the Wife, the Land is confirmed to them in ſpeciall tail, rendring a Hawk, the Leſſor ſhall have two; for the *Baron* ſhall have one Moity of the Inheritance; for his poſſeſſion was ſevered from the poſſeſſion of the Wife, *viz.* in the one Moity; So that of that Moity the Husband is ſeiſed in ſpeciall tail, and the Wife hath nothing. Of the other, whereof the Wife was Tenant in Common with the Husband, the *Baron* was thereof ſeiſed, in Right of his Wife, then he had a ſufficient Eſtate, whereupon a Confirmation might inure jointly to them. If Land be given to the *Baron* for life, the remainder to the Wife for life; and their Eſtates are confirmed in tail. The *Baron* ſhall have one Moity in tail only, he and his Wife the other Moity, and yet the *Tail* is not executed for any part. *Quære*, for this is a good caſe.

If Husband and Wife make a Leaſe of the Wives Land, rendring a Rent, the Husband diſtreins, and Avowes, and dies, the Cattle are diſcharged; for they do not belong to the Executor, being they are but a Pledge, and the Wife is to have the Duty, and therefore the Executor cannot detain the Pledge, and it is not like the caſe where the Husband recovers upon an Obligation made to him and his Wife, 33 *H.* 6. 48.

Although the Husband can give nothing to his Wife immediately, yet if a Diſſeiſoreſs makes a Leaſe for life, the Remainder to her ſelf in tail, the Remainder to *A.* in Fee, and after marries the Diſſeiſee, who Releaſes to the Tenant for life, this ſhall inure to the Wife.

A Reverſion is granted to *Baron & Fem*, and to a ſingle man and woman in Fee, the ſingle perſons marry, and the Tenant atturns, then the ſingle Man and Woman are divorced, the *Baron & Fem* ſhall have but a third part. If a man makes a Feoffment to *A.* and a *Fem ſole*, with a Letter of Atturny to deliver *Seiſin*, and before *Livery* they entermarry, they ſhall take by moities. Land is given to *A.* and *B.* his Wife, and to another *Baron*

&

& Fem in Fee, they are diſſeiſed, and *A.* releaſes to the Diſſeiſor, and then *A.* and *B.* are divorced for cauſe which hath Relation. *B.* and the *Baron & Fem* bring an *Aſſiſe*, leaving out *A.* and ſome think it is maintainable; for when *A.* and *B.* are divorced, yet the other *Baron & Fem* ſhall hold the Moity to them; for being the purchaſe took effect, and veſted by the Livery, and at that time the *Baron & Fem* not being divorced, took a Moity, that remaines ſtill; for to all Strangers *A.* and *B.* ſhall be ſaid to continue Husband and Wife; for if a Stranger had bought the Goods of the Wife, and then they had been divorced, yet he ſhall retain the Goods, as it is held in 26 *H.* 8. And if the Husband had made a Feoffment, the Wife could not have an *Aſſiſe* againſt the Feoffee, but muſt bring her *Cui ante Divortium.*

A Reverſion is granted to a man and a *Fem ſole*, and they marry, and the Tenant atturns, they take by Moities, for the Atturnment does operate upon the Deed; ſo if they marry before Livery is made.

If *Baron & Fem* make a Leaſe for life, and pray to be *received*, and the Husband makes *Default*, and upon his

Default the Wife is received, now ſhe admits the Diſcontinuance, yet if ſhe be barred ſhe ſhall have her *Cui in vita*, for ſhe had not Title then to have a *Cui in vita*; for that accrues by the death of her Husband. If a Feoffment with *Warranty* be made to a man and a *Fem ſole*, and they marry, and are impleaded, and Recover in *Value*, the Husband dies, they did not take by Moities. If Land be *Bargained and Sold* to a man and a *Fem ſole*, and they marry, and the Deed is inrolled, there they take by Moities, for it hath *Relation*. But if *Baron & Fem*, Tenants for life, before the *Coverture*, recover in *value*, by reaſon of the Reverſion with the Rent, they ſhall take the *value* by Moities. But if a Leaſe be made to a Man and a Woman for life, upon Condition to have Fee, they marry, and after performe the Condition, they ſhall not have Moities in the Fee. If a man be ſeiſed of Land in right of his Wife, and *Warranty* is made to them, and the Heirs of the Husband, and they recover in *value*, there ſhall be no Moities; for the Recovery in value muſt be according to the nature of the Eſtate.

If a *Fem*, being Tenant for life marries, and the Husband atturns to the grant

grant of the Reverſion, and then he is Divorced, yet it will binde the Wife.

If a Woman hath a Leaſe for twenty years, and the Leſſor confirmes to the Husband for forty yeares, who dies, ſhe ſhall have the Reſidue of the twenty years.

The Husband hath a Term in right of his Wife, and grants ſo many years as ſhall be behind at the death of him and his Wife, *Quære* if this be a good Grant?

The Husband is bound in a *Statute*, and after he and his Wife levy a Fine of the Land of the Wife to *A.* the Husband dies, the Land ſhall not be extended in the hands of *A.* for nothing paſſed from the Husband, but the Eſtate which he had during the Coverture, and *A.* ſhall have the ſame Benefit the Heir of the Wife ſhould have had. But if the Husband had made a Leaſe for yeares, or granted a Rent Charge, before the fine levied, there the Conuſee ſhould never have avoided it, becauſe they had been executed at the time of the levying the *Fine*. If Husband and Wife accept of a *Fine ſur conuſans de droit come ceo, &c.* from *B.* of the Wives Land, and they render it to him in tail, yet the Reverſion is

in

in the Wife onely, and the Husband hath nothing but by reason of the *Coverture*, 40 *Ass. p.* 4.

A *Fem covert* is infeoffed, the Husband being beyond Sea, who, upon his return, disagrees; yet the Freehold shall not be devested without an *Entry*; and if the Husband dies before his *Entry*, the Wife is *Remitted*, and the Title of *Entry* which the Feoffor had is taken away.

If a *Fem* tenant for life marries, the Husband makes a Feoffment, the Lessor enters, the Husband dies, she cannot avoid the *Forfeiture*. If a *Fem covert* be infeoffed, and disseised by a Stranger, the Husband disagrees to the first Estate, and dies, the Wife may enter, and retain against the first Feoffor, for the Disagreement was frivolous, the Wife having only a Right *Quod nota.*

If a *Fem* Jointenant for years marries, the survivor shall have all the Term. So if an Obligation be made to a *Fem sole* and another, and she takes Husband and dies, the survivor shall have all; for 'tis a *Chose in action.* If a *Fem* hath a Term, and marries, and dies, the *Ordinary* may commit *Administration* of it to a Stranger. But the Law seems to contradict this;

for

for the marriage is a Gift in Law, the Wife dying first.

If a *Fem* hath a Leaſe for years, and marries the *Villaine* of the Leſſor, he may enter into the Land as a *Perquiſite.*

The Husband is Tenant for life, the Remainder to the Wife for life, the Remainder to the Husband in tail, how the Husband might diſcontinue the Eſtate in tail, without barring of it, was the *Queſtion?* The intention was this, that the Husband and Wife ſhould make a Leaſe to *A.* for the life of the Husband and Wife, and the Survivor of them, and that *A.* ſhould grant his Eſtate to the Husband, and then he ſhould make a Feoffment, and that would prove a *Diſcontinuance.*

Land is given to *A.* and a *Fem ſole*, and to the Heirs of the Body of the Woman begotten by *A.* They marry, and have Iſſue, the Husband aliens a Moity, and dies, the Iſſue dies without Iſſue. If the Woman may enter into the Moity for the forfeiture? being ſhe could not enter at the time of the Alienation. And alſo ſhe is *Tenant in tail after poſſibility*, &c. in which caſe ſhe hath but a Freehold in Remainder, as ſhe had before; But otherwiſe,

therwiſe, if it had been an Eſtate in tail, in remainder after the Eſtate. *vide* 45 *Aſſ.* 6.

The Husband makes his *Will*, and deviſes out of his Mannor of *Dale* a certain Rent to his Wife, for her life, in conſideration, that ſhe ſhould not have her Dower, and dies. The Wife recovers by *Default* in Dower the third part of the Land, ſhe ſhall have the whole Rent out of the two parts; for the Recovery is upon a good Title. And a *Deviſe* cannot be averr'd to be a Jointure within the Statute; for at that time, neither Land, nor Rent were Deviſable, and therefore ſhe was *diſcovert* when the Deviſe took effect: and ſo both out of the words of the Act, and alſo out of the Equity; and then from that time the Title of the Land relates *Paramount*, the Title to the whole Rent ſhall remain.

Vide Leaſes. Attornment Remitter.

Baſtard.

IF the Baſtard enters into the Mannor, and recovers in a *Ceſſavit*, being the *Mulier* diſ-approves the Eſtate of the *Baſtard*, he ſhall not take benefit of the Recovery. If the Baſtard dies ſeis'd, the *Mulier* within age, ſome think

think the Right is gone, no more than if the *Mulier* had been born after the Deſcent. So if the *Baſtard* enters, and the *Mulier* dies, his Wife *enſeint*, and before the birth the Baſtard dies, and his Iſſue enters, the *Mulier* is not bound by that, and others think the contrary.

If a Baſtard dies, ſeiſed of Land, his Wife *enſeint*, and before the birth the *Mulier* enters, the Iſſue of the Baſtard; when he is born ſhall be bound; for by a dying ſeiſed onely without a diſcent to the Iſſue, his right of *Entry* was not taken away: For if a Diſſeiſor dies without Heir, the Diſſeiſee may enter upon the Lord by Eſcheat, becauſe there was no Heir to make it a Deſcent: So in this caſe.

If a Baſtard *Puiſne* enters into Land in *Borough Engliſh*, and dies ſeiſed, and his Iſſue enters, the *Mulier* is bound. But ſuch a Baſtard *Puiſne*, is intended, where the firſt Wife, by whom he had the *Mulier*, dies, and then he hath a Baſtard, and marries the ſame Woman; For if a man marries the woman by whom he hath a Baſtard, and ſhe dies, and after he hath a Mulier by another Wife, though they be not by the ſame Mother, yet ſuch a Baſtard gaines the Inheritance

to his Iſſue, if he dies without Interruption: By the ſame reaſon the Baſtard *Puiſne.* If the *Mulier* outs the Baſtard, who recovers againſt him in an *Aſſiſe*, where the *Mulier* pleads *Ne unques ſeiſe*, &c. and after dies, that deſcent ſhall take away the Right of the *Mulier*; for the poſſeſſion which he had is defeated by the Recovery: For he ſhall have an *Aſſiſe of Mortdanceſter*, or *Scire facias*, where ſuch a Poſſeſſion is removed. But otherwiſe it had been if he had entered.

If a Baſtard dies, living the Father, and leaves Iſſue, his Iſſue ſhall be in the ſame caſe againſt the *Mulier*, as the Father ſhould have been, if he dies ſeiſed without Interruption. If the Heir of the Baſtard be in by deſcent, he ſhall gain the Land from the collaterall Heir, or againſt the Lord by Eſcheat, as well as againſt the *Mulier Puiſne.* If the Iſſue of the Baſtard be the firſt that enters, and dies ſeiſed, his Iſſue ſhall retain againſt the *Mulier.* If the Baſtard dies, and his Iſſue endowes the Wife of the Baſtard, *Quære.* if the Right of the *Mulier* be bound? But if the Wife of a common Anceſtor be endow'd, the diſſent of the Reverſion ſhall be to the *Mulier. Quære.*

If

If a Remainder be directed to the Right Heirs of *A.* and he dies, and the Remainder veſts, and after the right Heir is proved a Baſtard, or is made ſo by Act of *Parliament*, yet he ſhall hold the Land for ever, becauſe he takes by purchaſe.

If there be Baſtard *eigne & mulier puiſne*, the Father makes a Leaſe for yeares, and dies, the yeares expire, the Baſtard enters, and dies ſeiſed, his Iſſue enters, the Right of the *Mulier* is not bound; for the poſſeſſion of the Leſſee for years, was the poſſeſſion of the *Mulier*; and being that he was once ſeiſed, ſo that he may have an *Aſſiſe*, or *Mortdanceſter*, his Right ſhall not be taken away. If there be *Baſtard Eigne & Mulier Puiſne*, and the Father dies ſeiſed of a Mannor, the Baſtard enters, and gets the Services of all the Tenants, and after one of the Tenants makes a Leaſe for life to the Baſtard, who dies ſeiſed, and the Iſſue enters into the Mannor; the *Mulier* may diſtrain the Tenant who made the Leaſe for life, for all the Services due after the death of the Father, for his Entry was not taken away, as to the Services of that *tenancy*, the Seignory of that tenancy being ſuſpended in the eſtate for life, and

ſo

ſo no Deſcent; but if there had been a Leaſe for yeares it had been otherwiſe.

Grandfather, Father, and Son, the Father a Baſtard, the Grandfather ſeiſed in tail. *Quære* if the Son ſhall Inherit?

If there be Baſtard *Eigne & Mulier Puiſne*, and the Father is diſſeiſed and dies, the Baſtard enters upon the Diſſeiſor, and dies ſeiſed: being there was no poſſeſſion in Law deſcended from the Father, but onely a naked right which veſts in the *Mulier*, therefore the Deſcent of the Baſtard ſhall not take away the right of the *Mulier*. But if the Father had died ſeiſed, and a Stranger had abated, upon whom the Baſtard had entred, and died ſeiſed, there the *Mulier* ſhall be barr'd, becauſe the poſſeſſion in Law deſcends: *Tamen Quære*, for the entry of the Abater veſts a right of Action in the *Mulier*, which cannot be deveſted by the Entry of the Baſtard.

If there be a Son *Baſtard Eigne*, and Daughter *mulier Puiſne*, the Father dies ſeiſed of a Rent, the Daughter having a Husband the Baſtard gets the Rent, and thereof dies ſeiſed, and that deſcends unto his Iſſue, yet the Husband ſhall be Tenant by the *Curteſy*, and

and the Mulier ſhall not be bound by it, for the Rent was veſted in the Daughter at the time of the Deſcent, and being the Daughter may chooſe whether ſhe wil admit her ſelf out of poſſeſſion, or no; therefore it is at her Election whether ſhe will ſuffer any wrong to be done to her ſelf, or no. If a man dies ſeiſed, having a Son a Baſtard *eigne*, and a Daughter a *mulier puiſne* being married at that time, the Baſtard enters and dies ſeiſed, his Iſſue enters, and the Husband dies, perhaps the Wife ſhall not be bound no more than an Infant in that caſe. But if the Baſtard had entered, and after ſhe had taken Husband, &c. it had been otherwiſe. If a man hath a Daughter a Baſtard *eign*, and a Son a *Mulier Puiſne*, perhaps the Maxime does not hold, for ſhe had no colour by the Law.

If there be two Daughters, *Mulier* and Baſtard, and they make Partition, and the Baſtard dies ſeiſed without Iſſue, the Land ſhall not Eſcheat, for if the Lord will ſay ſhe was a Baſtard, and ſo it ought to Eſcheat, the *Mulier* ſhall ſay that ſhe her ſelf is a *Mulier*, and therefore it belongs intirely to her, and if the Lord will ſay, they made partition, by which the *Mulier*

had admitted her inheritable, then the *Mulier* ſhall ſay, by that I did admit her to be my Siſter, and ſo I am her Heir, thus the Lord is eſtopped every way.

Lord Meſne and Tenant by equall Services, the Tenant fore-judges the Meſne, the Lord dies, having a Baſtard *eigne & Mulier puiſne*, the Baſtard hath Iſſue and dies ſeiſed, after he had married with the Tenant, the Wife dies, the *Meſne* reverſes the *Fore-judger* by error; the *queſtion* is, if the *Mulier* ſhall have the Rent of the Seignory? It ſeems the Maxime holds place as well of a Rent, as of Land, as it is holden in 14 *E.* 2. Baſtard 26. And though the Rent was ſuſpended by the Marriage, yet the Maxime holds place, as to the dying ſeiſed of a Rent without interruption; for if a man hath a Rent in Fee, and becomes *Tenant by the curteſie* of the Land, and dies, his Heir ſhall have a *Mortdanceſter* of the Rent, which he could not have, if his Anceſtor did not die ſeiſed.

Vide Releaſe.

Bona

Bona Felonum, &c.

THe Goods of thoſe who are attainted by Verdict, or Outlawry, or Confeſſion, are ſaid *Cattalla Felonum*, and if a man flies for Felony, the Goods which he hath at that time are *Bona waiviata*, and though he be Attainted after, yet they are ſo ſtill. But if a man flies for Felony, and after he is taken, and acquitted, there his Goods are forfeited, as *Catalla Fugitivorum*: but in all the caſes the property muſt be in him that flees. But by ſome *Bona Waiviata* are thoſe which are ſtollen by a Felon, and left. *v.* 29. E. 3. 12 E. 4. 6.

Borough Engliſh.

A Man dies without Iſſue, ſeiſed of an Acre in Borough Engliſh, having two Uncles, the youngeſt who enters into the Acre, by reaſon of the poſſeſſion is voucht with the Eldeſt, by reaſon of a Warranty entred into by the Nephew, they loſe, the Tenant who voucht them having recovered, dies, leaving two Sons, the eldeſt ſues Execution, and the youngeſt outs him, *vide* 11 H. 7. 12. *A.*

Charge.

GRandfather, Father, and Son, the Father diſſeiſes the Grandfather and dies, the Son grants a Rent Charge, the Grandfather dies, the Son ſhall not avoid his own *Charge* by the acceſſion of this new Right. If the Son diſſeiſes the Father, and grants a Rent Charge, and the Father grants a Rent Charge, the Land ſhall be charged in *Perpetuum*; but if the Son had been dead firſt it had been otherwiſe, and his Son ſhould have holden it diſcharged.

If a Stranger diſſeiſes the Father, and grants a Rent Charge, and infeoffs the Son, and the Father dies, the Son ſhall hold it diſcharged. If the Father diſſeiſes the Grandfather, and dies, the Son enters, and grants a Rent Charge, the Grandfather dies, he ſhall hold it diſcharged, although he was of full age at the time of the *Charge*; [*vide Sect. preced. cont.*] As if Tenant in tail infeoffs the Iſſue within age, who grants a Rent Charge at full age, after the death of Tenant in tail the Son ſhall hold it diſcharged, for in both caſes he is in of another eſtate.

If

If a Diſſeiſor grants a Rent Charge, and is diſſeiſed, a Releaſe is made to the ſecond Diſſeiſor, the Charge remains.

If two Jointenants grant a Rent Charge, *Provided* that it ſhall not charge the perſon of one of them, ſome think he ſhall not charge the other.

Tenant in tail grants a Rent Charge in fee, and makes a Leaſe for forty yeares, rendring a Rent, and dies, the Iſſue accepts the Rent: ſome think the Grantee ſhall have the Rent during the Leaſe, and the life of the Iſſue, though the Leſſee ſurrenders; *Quære*, for the Reverſion is diſcharged. The Father diſſeiſes the Son, and grants a Rent Charge, the Son endowes his Wife, *ex aſſenſu patris* in the ſame Land, the Father and Son die, the Wife enters as Tenant in Dower, ſhe ſhall hold it charged; for ſhe doth not claim from the poſſeſſion in Law, but from the poſſeſſion charged. If Tenant in tail grants a Rent Charge, and dies, the Abator ſhall not hold it charged. But by many the Rent in the firſt caſe is avoided, for the freehold was diſcharged. The Father diſſeiſes the Son, and grantes a Rent Charge in fee, and then makes a Leaſe for years, the Son confirms the Leaſe,

the Father dies, the Rent is extinct. So if a man grants a Rent Charge in Fee, and makes a Leaſe for years, and grants a Reverſion to the King, or to the Grantee, the Rent is gone.

If there be two Diſſeiſors, and the one grants a Rent Charge, the Diſſeiſee releaſeth to the other and his heirs, he ſhall hold it diſcharged, for he claims meerly from the Diſſeiſee. But if one hath two Sons by divers venters, and dies, and before entry the Eldeſt grants a Rent Charge, and dies without Iſſue, the youngeſt hath the Land from his Father, yet he ſhall hold it charged, for the eldeſt hath ſuch an eſtate as he might charge; for if the eldeſt had died without Iſſue, and the Land had gone to the Unkle, and from the Unkle to the Father, though the Father cannot be Heir to the Son, yet being the Land was charged he ſhall hold it charged; ſo in the other caſe, *Quære*, for there is a Meſne deſcent.

Tenant for life, the Remainder in Fee makes a gift in tail with a Remainder in Fee, he in the firſt Remainder releaſes all his Right to the Donee in tail, not ſaying to his Heirs, and after he grants a Rent Charge to a Stranger out of the Remainder in Fee, and dies, the Donee dies without Iſſue, the

the Heir of him in Remainder enters, if he ſhall hold it charged? For if he be remitted to his ancient Right, then the Land is diſcharged againſt him. And ſome think the Releaſe could not give the Right in Fee, which the Releaſor had to the Releaſee himſelf, for then in a manner he might Releaſe to himſelf, and if the Releaſe inures but as a Confirmation, then without queſtion the Heir ſhall be remitted, and ſhall hold it diſcharged; but if the Remainder had been appointed in tail to him who had it before in fee, the Remainder over in fee, then the Releaſe ought to inure to the firſt Eſtate in tail, and alſo to the Fee, and then if the laſt fee be fortified, the meſne Remainder is eſtabliſhed, and ſo the Releaſe inures to himſelf.

The Son makes a Leaſe to the Father for life, who makes a Leaſe for life to *A.* the Remainder in fee ſimple to the Son, the Son grants a Rent Charge out of the Remainder, and after Releaſes to *A.* and his Heirs all his Right in the Land, the Father and *A.* die, if his Iſſue ſhall hold it charged? firſt, it is cleer, that the Right Fee is diveſted, and a tortious Fee ſetled in the Son all at one Inſtant, as if Tenant in tail makes a Leaſe for life, the Inhe-

ritance of the eſtate in tail is deveſted, and a fee ſimple veſted all at one moment. So if the Husband makes a Leaſe for life of the Wives Land, the fee which the Husband had in right of his Wife is deveſted, and a new fee in himſelf in his own right veſted at the ſame time. So in the firſt caſe; then when it is granted out of the Reverſion, it is all one as if it had been granted out of the Remainder, becauſe a Reverſion and Remainder agree in ſubſtance, *viz.* *Terra revertens*; then when the Son releaſed unto *A.* and his Heirs all his Right, that ſhall not inure as an Entry and Feoffment, for *A.* was in by Title without Diſſeiſin; then it does not give to him the Remainder; as if he had Releaſed to him all his eſtate in the Land, or as if he had releaſed all his Right, *Habendum* the Land in fee; for there the fee paſſes, but here he hath both the Right and the Eſtate, and then a Releaſe of the Right does not reach the Eſtate. Others are of opinion that the Right in fee cannot drown in the Eſtate for life, and in the Remainder it cannot *merge*; for then in truth he releaſes to himſelf. But if a *Fem* Diſſeiſoreſs make a Leaſe for life, and after marries with the Diſſeiſee, who Releaſes to the Tenant

for

for life in Fee, the Fee will *Merge* in *auter droit* for the benefit of the Eſtate in Fee in Reverſion, then if the Releaſe do not perfect the Remainder, if the Grant of the Rent which is an Aſſent to the Remainder does ſo inſeperably unite the Remainder, the Rent and the Right, ſo that the Right ſhall be drowned in the Eſtate for the preſervation of the Rent? and ſome think it ſhall not; for if a Diſſeiſee takes an Eſtate in Fee from him who hath the Land by deſcent, he agrees unto it; and yet if he dies ſeiſed, his Heir ſhall be *remitted*, and ſo the Rent charge avoided. But others think, that in as much as by the grant of the Rent charge he hath agreed to the Remainder, and ſo to the Livery, he cannot now enter upon the Tenant for life, and then the Releaſe gives the Remainder, and ſo the Land continues charged.

Claim.

IF a Reverſion be granted upon Condition which is broke, the Reverſion ſhall be adjudged in the Leſſor without *Claim*, for the Grantee was privy to the Condition: as if a Condition be annext to the Feoffment, that if the Feoffee doth not perform ſuch an act, that

that then he ſhall have it but for life; if he does not perform it, the Eſtate in Fee is preſently veſted in the Feoffor without Claim, for he was privy to the Condition. But the Lord ſhall not have a Reverſion granted to his Villein, or aliened in *Mortmain*, or to his Mother, who conſents to a Raviſher without claim, for there is no *Privity*. But, in theſe caſes, if the particular tenant hath an Action of Waſt brought againſt him by the Lord, or his Son, perhaps the uſing of the Action will countervail a *Claim*: And note that he ought to come upon the Land and make a *Claim*, and he ſhall not be puniſh'd for it, no more than the Leſſor, who comes upon the Land to ſee if Waſte be committed; for it is a Condition in Law annex'd to all the Caſes. The Heir makes a Feofment upon Condition, the Mother recovers Dower, the Condition is broke, *Quære* what courſe he muſt take to recover the Reverſion? for, if the Mother recovers her Dower againſt an Abator, the Heir ſhall not gain the Reverſion by Claim. And if Tenant for years be outed, and the Diſſeiſor dies ſeiſed, and the Termor enters; many are of opinion, that the Diſſeiſee ſhall not have the Fee by *Claim*.

If

If there be a Diſſeiſor of twenty Acres, and the Diſſeiſee enters into one, ſaying nothing, he may have an *Aſſiſe* for the reſt; for the Poſſeſſion ſhall not be deveſted by the conſtruction of the Law without a particular *Claim* of the party.

Capacity.

LAnd is given by Deed to *A.* and a Dean & his Succeſſors, and Livery is made to *A.* in the name of both, the Dean takes nothing, for they take in ſeveral *Capacities*, and in common, and not jointly. But if the Diſcontinuee enfeoffs the Iſſue in tail within age, and another, and makes Livery to the Infant in the name of both; though the Infant be remitted for a moity, yet the other moity veſts in the other, and they are Tenants in common, for their *Capacities* are not ſeveral, but they take ſeverally by the operation of the Law.

Ceſſavit.

IF the Tenant ceaſes for twenty years, a *Ceſſavit* cannot be maintained but for the two laſt years before the Writ. And therefore if the Tenant ceaſes for two years, and marries, and the Lord recovers in a *Ceſſavit*, and the Tenant dies,

dies, the Wife ſhall be endowed againſt the Lord; for the *Ceſſavit* cannot be maintained for the *Ceſſer* before the coverture, and ſo the Title of Action ſhall not have *Relation*, &c. but is grounded upon the *Ceſſer* two yeares before the Writ purchaſed, and part of it was during the Coverture, and then the *Ceſſer* of the Husband, during the Coverture ſhall not prejudice the Wife of her Dower. But *Quære* if the caſe be not falſly put? for it ſhould rather have been, that the *Baron* ceaſes one year before the Coverture, and another year after, and then the *Ceſſavit* is brought.

Ceſſante Cauſa, &c.

THe Seignoreſs ſeiſes the Body and Land of the Tenant, and after marries the *Villain ingroſs* of the heir, and they commit waſt, the Heir brings an Action of Waſt, 'tis cleer that his body is out of Ward, and being that the Land is in Ward, becauſe an Infant cannot perform *Knight Service*, and ſo the cauſe is executory, and in conſideration that the Signory remains and now the Signory during the Coverture by the intermarriage with the Villain is determined in the Tenancy, and

and ſo the Freehold and Inheritance of the Seignory is *merged* in the Tenancy by Act in Law, notwithſtanding, that the poſſeſſion of the Seignory is ſuſpended by reaſon of the chattle in the Tenancy, *viz.* the Wardſhip of the Land, becauſe that the Husband ſhall be Tenant by the Curteſy, and may be granted over notwithſtanding the ſuſpenſion, by reaſon of the Chattle in the Tenancy, & by the ſame reaſon it ſhall be a Releaſe in Law to the Lord of the Villein by Act in Law, and therefore the land ſhal be out of *Ward* for *Ceſſante*, &c.

If the Lord of a *Villain* gives Land in *ancient Demeſne* to the *Villain*, and afterward the Lord reverſes the Fine by *diſceit*, the *Manumiſſion* is gone, for the conveyance by the Fine, which was the cauſe of the *Manumiſſion* being vacated, the Effect falls to the ground.

Common, v. *Apporcionment.*

Condition.

A. Having two Sons, makes a Gift in tail to the Eldeſt, the Remainder in fee to the Youngeſt, on condition, that the Eldeſt ſhall not make a Feoffment with warranty, to the intent to bar him in Remainder; and if he does, that then the

the yongeſt and his Heirs ſhall enter, the Eldeſt makes a Feoffment with Warranty the Father dies, and the Eldeſt dies without Iſſue, the yongeſt may enter, for the entry given to the yongeſt is void, and then the Heirs of the Feoffor are to enter; then the Father having cauſe to enter, and he being dead, the *Condition* is in ſuſpence in the Eldeſt, and revived by his death (*v.* 41. *E.* 3. 21.) and given to the youngeſt; for the Condition was not extinguiſhed by the Feoffment; and the Warranty does not bind Titles of Entry. But if the Feofment had been after the death of the Father, then the Condition had been extin&.

If I am Leſſee for the life of *C.* and grant my eſtate to *D.* upon Condition that if *D.* dies living *C.* that it ſhall be lawful for me to re-enter, *Quære* if this Condition be ſufficient for me to enter upon an Occupant?

The Meſne grants the Meſnalty upon Condition, that if the Grantee pays, &c, by ſuch a day, that then he ſhall have Fee, before the day the Grantor to whom the money was to be paid is attainted, yet the Grantee may perform the Condition, and enjoy the Fee.

A Leaſe for life is made upon Condition,

dition, that if the Leſſor grants the Reverſion, the Leſſee ſhall have it in Fee. The Leſſor grants the Reverſion by Fine to one for life, the Grantee ſhall have it for life, and the Leſſee ſhall have it after the death of the Grantee, and not before; But if the Condition had been, that if the Leſſee pays twenty pounds, &c. there he ſhall deveſt the poſſeſſion out of the Grantee. *Note* the diverſity.

If the Husband having a Leaſe for twenty yeares in right of his Wife, grants two years upon *Condition*, that the Grantee ſhall not grant over his term, and if he does, that he, his Executors and Aſſigns may re-enter; the Husband dies, the Leſſee grants over his term; the Executors of the Husband cannot enter, for it is a Condition annext to the Reverſion, and if they do enter they defeat the Wives Reverſion. The Eldeſt Son cannot enter where the Reverſion deſcends to the youngeſt Son by *Borough Engliſh*, or ſpeciall tail. Nor the Heir on the part of the Father, where the Land goes to the Heir on the part of the Mother, nor the Executor of one Jointenant where the Teſtator made a Leaſe upon ſuch a Condition, and died, for then he ſhould deveſt the

Reverſion

Reverſion out of the other, which cannot be. And in the principall caſe the Wife cannot enter; for ſhe is not privy to the Condition, neither doth ſhe claim under the Eſtate of the Husband. As if one Jointenant grants his part for yeares upon ſuch a Condition, the Survivor cannot take advantage of it. But if the Husband had granted over all the years upon ſuch a Condition, or the Father had made Feofment of the Land in Borough Engliſh, he ſhould enter, for he claims by the Father. Some think the Condition is extinct, as if a man makes a Leaſe for years, upon Condition, *ut ſupra*, and dies, having a Son and a Daughter by one *Venter*, and a Son by another, the Eldeſt takes the Rent and dies; now the Siſter ſhall have the Reverſion, and the Condition is gone; for ſhe is not Heir. And a Rent is incident to a Reverſion, and paſſes by the Grant of it, but ſo doth not a Condition.

A Feoffment is made upon Condition, to re-infeoffe, the Feoffee charges the Land, the Grantee brings a Writ of *Annuity*, and Recovers, the Feoffor enters. 44 E. 3. 9.

If *A.* be bound to pay ten pound to *B.* and he releaſes ten pound which he

he ought him; yet this is no performance, for there ought to be a payment in *Fact.* And therefore if one be bound to Releaſe a Rent Charge which he hath out of the Mannor of *D.* and he purchaſes an Acre, now the Rent is extinct, and yet the Condition is not performed; But If I am bound to enfranchiſe my *Villaine*, and I bring an Action againſt him, the Condition is performed. So if I am bound to diſcharge an Obligation in which I am bound to *A.* if I purchaſe the Mannor to which *A.* is a *Villein regardant*, the Condition is diſcharged; for the word *Diſcharge* refers to all manner of Diſcharges. If I am Infeoffed, upon Condition that I ſhall not Alien to *A.* and I ſuffer him to recover it *Feintly*, or if I ceaſe, ſo that he being my Lord recovers in a *Ceſſavit*, or if I acknowledge my ſelf to be his *Villein*, or if I make a Feoffment with *Warranty*, ſo that that Acre is recovered by him in *Value*, yet the Condition is not broke; for it extends only to Alienations in *Fact.* If I make a Gift in tail, upon Condition that the Donee ſhall not ſuffer a *Feint Recovery*, if it be not to the benefit of his Iſſue, and after in a *Feint Writ* he vouches, and a Recovery is had againſt him, and he recovers in

Value, and hath Execution, and that is to the juſt value onely, the Condition is not broke. But if the Donor had been voucht, it is cleer he ſhould not have entred, for he ſhall not ſay that the Recovery was *Feint* when he was voucht, and made a party to the breach of the Condition: and he cannot enter into *Warranty*, ſaving the Condition which is not broke, for it is but a poſſibility.

Land is given in tail to the Heires Males of the body of the Donee, upon condition, if he dies without Heirs *Females* of his body, that the Donor ſhall re-enter, the Condition is void, for he cannot have Heirs Females ſo long as he hath Iſſue Male.

A Leaſe for years is made upon condition, that the Leſſee ſhall not Alien without the conſent of the Leſſor, he gives him leave to grant over his Eſtate upon Condition, and ſo he does, and enters for the Condition broke, he may after grant it over without his conſent; for the Condition is performed 32 *H.* 6. 10. *a.*

A Rent charge is granted upon Condition, the Grantor makes a Feofment of the Land, the Condition is broke, the Rent is arrear, if the condition be extinguiſht by the Feofment, being

being the Feoffor cannot have it in the ſame manner as he might when the Grant was made? But if the Grant had been upon Condition, which if not performed to ceaſe, the Feoffee ſhall have Benefit of it.

If a Feoffment be made upon Condition, that the Feoffee ſhall make a gift in Frankmarriage with the Coſen of the Feoffor, this ſeems to be a void Condition, *Quære* if he muſt not make an eſtate for life? So if it had been to make ſuch a Gift to a Religious perſon.

If a Feoffment be made upon Condition, the Feoffee makes a Leaſe for life, and dies, and the Reverſion deſcends to the Feoffor. *Quære* if the Condition be extinct?

The Mortgagee enfeoffs the Heir of the Mortgagor in Mortgage alſo to be firſt paid, after the firſt day the firſt Mortgager dies, the Heir tenders the money to the firſt Mortgagee at the day, and he refuſes, and he tenders the money to the Heir, &c. and he refuſes. Some think the Son may perform the Condition, for it is not ſuſpended, being a Collateral Condition (*Vide* 21 E. 4. the caſe of a *Corody*) and the payment ought to be made to the Mortgagee (though he hath made

a Feoffment of the Land (as it ſhall be to the Executors, and not to the Heir, and 17 E. 3. 2. is not Law. And upon the firſt refuſall the heir is not remitted, for he ſhall not be remitted upon a Title.

If the Tenant atturns upon Condition, which is broke by the Grantee, yet the Reverſion is not deveſted; for the Aſſent cannot be conditional, for he doth not claim the Reverſion from him that atturns, neither can it be made conditionall by the Act of a Stranger to the grant: for if Tenant in tail makes a Leaſe for years, rendring a Rent, and dies, and the Iſſue accepts the Rent upon Condition that it ſhall not prejudice his *Entry* to avoid the Leaſe, yet he ſhall avoid the Leaſe; for the Aſſent is a thing executed, which wil not ſuffer any Condition performable. But if the Condition be precedent to the Aſſent, the Condition is good. But a Releaſe of Right may be upon Condition, as a Releaſe of the *Seignory* to the Tenant upon condition. So of a Releaſe upon condition from one Jointenant to his Companion, for there the thing veſted in his perſon is deveſted, unto which a Condition may be annext. But otherwiſe of an Aſſent. And if the Patron aſſent to the charge

of

of the perſon upon Condition, that is good, becauſe the Aſſent is an Intereſt in Law.

If a Gift in tail be made upon Condition, the Donee ſhall make a Feoffment, which is done accordingly, yet the Iſſue ſhall have a *Formedon*; for if the Condition be not performed the Donor could not have entered, and when it is not performed, yet the Eſtate of the Iſſue ſhall not be defeated. If a Leaſe for life be made with ſuch a Condition, yet the Leſſor may enter for the forfeiture, if the Feoffment be made. So if the Leaſe had been made upon Condition that he make a Feoffment, all is one. If an Infant be infeoffed, upon Condition to enfeoffe another, which is done accordingly, yet the Infant may enter, for he hath performed the Condition.

If two are infeoffed, upon Condition to infeoffe *A.* if one does infeoffe him of the one Moity, and the other of the other Moity, the Condition is performed, for the Intent is fulfilled.

If a Leaſe for life be made, with a Condition of *Accruer*, if before the day the Leſſor be attainted, yet upon the performance of the Condition the eſtate enlargeth.

If a man hath Land, by deſcent on

the part of his mother, and makes a Feoffment upon Condition, to be performed on his part, or the Heirs, on the part of his Father, and the Father dies, ſo that the Land deſcends to him, the Condition is extinct, although he dies without Iſſue; for notwithſtanding he had the Land from his Mother, yet the Condition goes to the Heirs on the part of his Father, being a new thing. As if a Feoffment be made upon Condition of Land in Borough Engliſh, the eldeſt Son ſhall not enter for the Condition broken, as the Heir male muſt do where a Condition is deſcended upon the Heir Female. But on the other ſide, if the Son makes a Feoffment to his Mother, of Land deſcended to him from his Father, and after the Mother dies, and the Son dies without Iſſue, the Heir on the part of his Father muſt perform the Condition, and the Heir on the part of his Mother ſhall have the Land in the mean time, and if the Condition had been broke in the life of the Mother it had been all one, and the Heir on the part of the Father ſhould have entred; for the Son is not remitted by the Deſcent. The caſe was; after the entry the Son granted a Rent Charge, and died without Iſ-

ſue

ſue, if the Heir on the part of the Father ſhall hold it diſcharged? and ſome think he ſhall.

If *A.* makes a Leaſe for years upon a collaterall Condition, and the Leſſee makes a Leaſe for 20 years, and then ſurrenders to the Leſſor, it ſeemes to ſome that the Condition for the reſt is extinct; for he hath part of the eſtate by his own Act, ſo that if he ſhould re-enter, he could not be in, in the ſame manner as he was before; for he cannot avoid all the eſtate.

If a Feoffee upon Condition make a Leaſe for life, and after the Feoffor releaſeth the Condition to him in Reverſion, the eſtate for life is diſcharged of the Condition, and it ſeems to them all one, *viz.* a Releaſe in *Deed*, and in Law. And *Note* if Feoffee upon Condition makes a Leaſe for life, a Releaſe of the Condition to Tenant for life ſhall extend to all the Condition againſt the Feoffee. And it is cleer if there be Feoffee upon Condition of two Acres, and the Feoffor releaſes the Condition in one, it remains in the other, as it ſhall be of a Warranty annexed to two Acres, for the Condition is ſeveral as the Right is, and ſhall remain in part of the Land, as the Right ſhall do. But if the condition

had been by two, or to two, there a Releaſe by one, or to one, diſchargeth all the Condition, as it ſhall do a Warranty: but if a man hath two Acres, one to him and his Heirs Males, and the other to him and his Heirs females; and makes a Leaſe for years of both of them, rendring a Rent upon Condition, and dies, having a Son and a Daughter; the Condition remains for the Son in one Acre, and is extinguiſhed for the other. And if Leſſee upon Condition ſurrenders one Acre, it remains for the other.

Tenant for life makes a Leaſe for years, upon Condition to have it for the life of Tenant for life, the Leſſee dies, and his Executors perform the Condition, yet the Freehold ſhall not accrue to them. For when the Leſſee for years died, the Condition was gone; for the Executors are not capable to perform the Condition to increaſe a Freehold, although they may to encreaſe a term; for the one is teſtamentary, and the other not.

Vide Infant, Fem covert, Entry, Rent.

Confirmation.

LEſſee for life makes a Leaſe for years, rendring a Rent, the Leſſor confirms the Eſtate of the ſecond Leſſee,

Tenant

Tenant for life dies within the term, and the Leſſor diſtrains and avowes for the Rent, ſome think he cannot.

Tenant for life grants a Rent charge in Fee, the Leſſor joins in a Feofment of the Land, the Rent ſhall indure for ever; for it is the Feoffment of the Tenant for life, and the confirmation of the Leſſor.

If a Diſſeiſor takes a Confirmation of the Lord to hold by leſſer Services, and the Diſſeiſee releaſes to him, yet he ſhall take advantage of the Confirmation.

If there be two Tenants in Common for life, and a Confirmation is made to them and their Heirs, they are Tenants in Common of the Fee, as they were of the Freehold; for a Confirmation inures according to the nature of the eſtate upon which it inures, and a Confirmation does not alter the eſtate. If Land be given to two men, and the Heirs of their two bodies, and the Donor confirms the Land to them in Fee, they are not Jointenants of the Fee.

If a Diſſeiſor grants a Rent Charge to the Diſſeiſee, and he grants it over, and after re-enters, he ſhall hold it diſcharged, for it cannot inure as a Grant, and as a Confirmation.

If

If there be Lord, Meſne, and Tenant, each by Fealty and twelve pence, the Lord confirms the eſtate of the Tenant to hold by one penny, that Confirmation is void, for want of privity; for there ought to be an immediate tenure where it is to be abridged. As if Tenant for life makes a Leaſe for years, and the firſt Leſſor confirms the eſtate of the Leſſee for years, that is void for want of Privity. So if Tenant in tail makes a Leaſe for his own life, and the Donor confirms, that will not enlarge his eſtate.

Lord, Meſne and Tenant, each of them holds by twelve pence, the Meſne is outlawed in Felony, the Lord confirms the Eſtate of the Tenant to hold by one penny, the Heir of the Meſne reverſes the Outlawry by Error, and diſtrains and avows for twelve pence.

There is Diverſity, *viz.* if the Tenant dies without Heir, the Law caſt the poſſeſſion of the Tenancy upon the Lord, ſo that he hath the poſſeſſion in Law before Entry. But if the Tenant be attainted of Felony, there the Lord hath not the poſſeſſion either in Fact or in Law before Entry; for if the Tenant continue twenty years in poſſeſſion after the Attainder, he ſhall be ſaid to be Tenant, then here

the

the Law doth not caſt the poſſeſſion of Meſnalty upon the Lord, and ſo there wants that privity between the Lord and the Tenant which is requiſite to the diminiſhing of the Services. Then here the Confirmation inures to prove his Agreement to the Eſcheat, or otherwiſe, it ſhall be void, which the Law will not ſuffer. If the Meſne grants the Meſnalty to the Lord *Par auter uge*, and after the Lord had confirmed, *ut ſupra*, and after *ceſty que vye* dies, there the Meſne ſhall hold according to the *Confirmation*; for the Fee of the Seignory was not in ſuſpence, becauſe he had it but *par auter vye*.

If a *Fem* hath a Leaſe for twenty years, and the Leſſor confirms to the *Baron* for forty years, who dies, the *Fem* ſhall have the reſidue of the twenty years, *Quod nota*.

If a Diſſeiſor makes a Gift in tail, or Leaſe for life to *A.* to whom the Diſſeiſee confirms, yet after the eſtate determined he ſhall enter upon him in Reverſion; for the eſtate is only fortified, but if the Confirmation had been to the Diſſeiſor, he cannot enter upon the particular Tenant. But if the Diſſeiſor had given, &c. to *A.* and *B.* and to the Heirs of *A.* and the Diſſeiſee confirms the eſtate of B. *Quære.*

But

But it is cleer, if he had confirmed the Eſtate of *A.* he ſhould never enter upon his Heirs; for if a Diſſeiſor gives Land to *C.* in tail, the Remainder to the right Heirs of *C.* and the Donor confirms the eſtate, that ſhall go to the Fee. And if a Diſſeiſor gives land to *A.* for life, the remainder to B. for life, and the eſtate for life to *A.* is only confirmed, *Quære.*

If a Diſſeiſee, where his entry is taken away, and a Stranger enters upon the Heir in by deſcent, confirms the Eſtate of the Stranger, though his confirmation gives no poſſeſſion of the Freehold, yet his ancient Right is gone for ever. But if the Heir who is in by deſcent were diſſeiſed by *A.* who makes a leaſe for life to B. and the firſt Diſſeiſee confirms his Eſtate, and the Heir enters, the Diſſeiſee hath no remedy during the life of B. for the Confirmation continues ſo long, and no longer. And the Heir hath the Right of B and ſo the Diſſeiſee cannot have an Action againſt B. and by the ſame reaſon he cannot have an Action againſt him that hath his Eſtate, in reſpect of the firſt Diſſeiſee. So if the Heir in by deſcent, had made a Leaſe for life to the Diſſeiſee

ſeiſee and a Stranger, and the Diſſeiſee confirms the Eſtate of the Stranger, there the Diſſeiſee hath no Remedy, during his own life, though the Heir re-enters, *Cauſa qua ſupra*, but his Heir ſhall have Remedy; for it was but a concluſion. And ſome ſay that the confirmation in the firſt caſe ſhall not extend to the Right that was ſuſpended, as a Releaſe will do, no more than if a man hath a Rent Charge, and he and another diſſeiſe the Tenant of the Land, and he which hath the Land confirms the Eſtate of his companion, the Diſſeiſee re-enters, the Rent is revived; for as the Rent was not grantable, being ſuſpended in the Inheritance, no more may the Confirmation extend to it, or touch it.

Two Jointenants for life of two Acres, the Land is confirmed to them in Fee of one Acre to the uſe of one, and of the other Acre to the uſe of the other in fee, they are ſeverall Tenants of the Freehold of the ſeverall Acres, for the Confirmation is drownd by the Confirmation in Fee to the *Uſe*, and the Freehold made according to the *Uſe*, as if it had been before the Statute of 27 *H.* 8.

The

The Parſon makes a Leaſe for twenty years, the *Ordinary* confirms for ten, being it is an intire thing, it cannot be confirmed in part, as a Confirmation to the Diſſeiſor, *Tamen Quere*; for the Aſſent of the Patron cannot be like to that.

The Husband is Tenant for life, the Remainder to the Wife for life, a confirmation is made to them in tail, how it ſhall inure? Some think that they ſhall take the Eſtate by *Intireties*, and not by *Moities*. It may be ſaid that the eſtate for life to the Husband, the remainder to the Wife continues, but if not, then to the Wife for one Moity, and a Moity in the Freehold ſhall be extinct, &c.

Vide *Baron & Fem, & Waſt.*

Continuall Claim.

LAnd is given to *Baron & Fem* and a third perſon, and to the Heirs of the Bodies of the *Baron & Fem*, they have Iſſue, the *Baron* dies; Tenant for life aliens a Moity in Fee, the Wife makes *Continuall Claim*, the Iſſue dies without Iſſue, the Wife may enter upon the Heir of the Feoffee, who dies within the year after the *Continuall Claime*. *Quere*. It ſeemes though

though at the time of the *Continuall Claim* ſhe had a Right of Entry, yet now the Eſtate is changed, and ſhe ſhall not enter. *Quære* how *Continuall Claim* may be made by Tenant in common for the poſſeſſion *pro Indiviſo*. If the Diſſeiſee dies after he hath made *Continuall Claim*, and within the year a Deſcent is caſt, the Heir of the Diſſeiſee cannot enter, for it gives only a Title for the advantage of the perſon who durſt not enter. But if the Deſcent had been in the Life of the Diſſeiſee, then the Heir of the Diſſeiſee may take Advantage of it. For a Title of Entry deſcended. If Tenant for life, with a Remainder over, be diſſeiſed, and makes *Continual Claim*, & dies, he in Remainder ſhall avoid a Deſcent happening within a year after the *Claim*, for his Intereſt was reduced. Otherwiſe of a Son, in the life of his Father he hath no Intereſt. If two Jointenants are Diſſeiſed, and one makes *Continual Claim*, and then dies, and after a Deſcent is caſt, *Quere*.

If the Grandfather be a Diſſeiſor, and dies ſeiſed within a year after *Continual Claim* made, and after the year, and before Entry, the Father dies, and the Son enters, the Diſſeiſee may enter upon him, *Quære*, for ſome think the contrary. *Cove-*

Covenant, vide *Uſe*.

Damages.

LAnd is given to *Baron & Fem* in Fee, the Husband dies, the Wife waives the poſſeſſion, and recovers Dower againſt the Heir, ſhe ſhall have *Damages*; for when ſhe refuſed, the Husband ſhall be ſaid to die ſeiſed, and ſo within the Compaſs of the Statute. If the Husband makes a Feoffment, and takes an Eſtate to himſelf and another in Fee, the Husband dies, the Wife ſhall not recover Damages; for ſhe recovers her Dower of the Eſtate which he had before, and not of the Eſtate whereof he died ſeiſed: So if he had retaken in Fee upon Condition, &c. For the Law ſays ſhe is endowable of the Firſt Eſtate, and not under the Condition.

Daughter.

A Man makes a Leaſe for years, and dies, having a Daughter, his Wife *Enſeint* with a Son, the Daughter confirms the Eſtate of the Leſſee to hold to him for life with *Warranty*. The Son

Son is born, and dies without Iſſue, the Daughter enters upon the Leſſee, and upon a Re-entry ſhe brings an Aſſize, ſome think it maintainable. But if the Son had Entred upon him an *Ejectione Firmæ* lies.

A. hath two Daughters, the Eldeſt diſſeiſes the Father, the Father dies, ſhe hath Iſſue and dies; the other Enters, claiming her part of the Moity, and ſhe brings her Aſſize, that was a *Moot* caſe.

If Tenant in tail diſcontinues, and dies, having a Daughter, his Wife *Enſeint* with a Son. The Daughter Recovers in a *Formedon*, and dies before Execution without Iſſue, the Son born after ſhall not enter, nor ſue Execution.

If the Daughter recovers in value, by reaſon of a *Warranty* of the Anceſtor before the Birth of the Son, the Son when he is born ſhall enter upon Her, for he recovers as Heir, and it comes in *Lieu*, and ſo ſhall be in the ſame Degree as the firſt Land was.

A man makes a Leaſe for years, rendring a Rent upon Condition, and dies, leaving a Son and a Daughter by one *Venter*, and a Son by another, the Eldeſt Son gets the Rent, and dies, the Daughter ſhall

have the Reverſion, but the Condition is gone, for ſhe is not Heir.

If a Daughter enters by purchaſe, or for Alienation in *Mortmain*, ſhe ſhall retaine againſt a Son born after.

A man hath a *Park* by Preſcription in Land in *Borough Engliſh*, and dies, having two Daughters, the Queſtion is, which of them ſhall have it? Some think the youngeſt; for a *Park* is nothing but Land incloſed, and a Liberty in Land ſhall enſue the nature of the Land, alſo a *Park* may be by *Preſcription*, 18 *H.* 6. 21. *a.* 1. *H.* 4. 4. One may have the Liberty of a Park without *Allowance*. Then if *Preſcription* can make a Park, there is no doubt but that it may be of the nature of *Borough Engliſh*; for the *Comencement* of it is not known, 10 *H.* 7. 6. *per Keble.*

Vide *Parceners.*

Deed.

A. makes a Feoffment of the Manor of *D.* to which an Advowſon is appendant, by Deed, and makes a Letter of Atturny to make Livery, the Advowſon ſhall not paſſe by the delivery of the Deed before *Livery* be made.

It

If the Mannor of *D.* be given by *Deed*, with all the Woods, and within the Deed there is a Letter of Atturny, to make Livery, if Livery be not made, yet his Executors ſhall have the Wood. But if Livery be made, then the Wood ſhall go along with the Land.

If *A.* requires another, or gives him authority without *Deed*, to write, ſeal, and deliver a Grant of a Rent Charge out of the Land of the Grantor, in the name of the Grantor, which is done, the Grant is good; for if I make a Grant, and command one to deliver it, it will be good without Deed. So if I by *Paroll* deliver it him as an *Eſcrowle*, to be delivered as my Deed, upon Condition to be performed, that is good, But an Authority to make Livery muſt be by Deed. Neither ſhall a Woman aver the Aſſent of the Father for Dower, *Ex Aſſenſu patris*, without Deed. Neither can the Leſſor Authorize the Leſſee to commit Waſt without Deed.

If an Infant delivers a Deed which bares date two years after, and at the end of the two years he is of full age, he ſhall not be Eſtopped to ſhew the deli very before the date, no more than a *Fem covert*, otherwiſe every Infant may be deluded.

Debt.

LEſſee for forty years makes a Leaſe for ten years, rendring a Rent, the firſt Leſſee ſurrenders, the Leſſor brings Debt againſt the ſecond Leſſee, *Quære.*

A man ſhall not have *Debt* for Releif or Eſcuage granted unto him; for it is mixt in the Realty, but his Executors ſhall, but he muſt diſtrein. So the Lord ſhall not have an Action of *Debt* for *Ayd pur file marier*, or *pur fair fits Chivalier*. But if he dies before it be levied, the Tenant ſhall be diſcharged of it.

An Action of Debt ſhall not be brought againſt the Heir, and his Brother in *Borough Engliſh*, where the Eldeſt hath nothing by deſcent, as it ſhall be againſt the Heirs in Gavel kind; for there he may have a joint judgement againſt all, and not againſt the Eldeſt in the other caſe, for he hath nothing upon which it may be levied. *Quod nota.*

An Action of Debt brought by Executors ſhall be in the *Detinet* only, although it be for Arrears of Rent incurred after the death of the Teſtator. So it ſhall be againſt a man acccomptable to the Teſtator.

A Seignory is granted for years, the Rent is *Arrear*, and the Tenant dies, the years expire, if the Grantee ſhall have an an Action of Debt againſt the Heir, becauſe it was due in the time of his Father, and alſo ſome was due in his own time, or if he ſhall have an Action of Debt againſt the Executors, for that which was due in the Teſtators life time, or is without Remedy? Some ſay that the Heir ſhall not be charged in *Debt*, if the Father die, not oblige himſelf and his Heirs expreſſely, and the Executors ſhall not be charged, for they were not chargeable by the death of the Teſtator, for at that time the Grantee could not have an Action of Debt, but his remedy was by diſtreſſe; for then the years were not expired, and ſo no remedy. *9 H. 7. 17. a. Co. 4. 49.*

An Annuity is granted for the life of *A.* the Grantee releaſes all Actions of Annuity, he ſhall not have an Action of Debt for the Arrerages, although that *A.* dies afterwards.

Devaſtavit, vide *Executor*.

Deviſe.

A Woman hath Iſſue a Son, and by another Husband hath Iſſue another Son, the ſecond Husband deviſes Land to the Wife for life, the Remainder to the next of the blood of the Wife. The youngeſt Son ſhall take in Remainder, although it be true that one is not nearer of blood to the Mother than the other, and the Eldeſt is of the moſt worthy blood, yet he is not neereſt, and ſo it is uncertain who ſhould take, according to the letter of the *Will*, yet the Intent (which is always to be conſidered in Wills) ſhall be conſtrued in Favour of the youngeſt, becauſe he was Iſſue of the Deviſor, *Paſc.* 5. *Eliz.* A great Caſe was argued in the *Exchequer*. There were three Brothers, the ſecond brother purchaſed Land, and deviſed it to his Son in tail, and if he died without Iſſue, that then it ſhould remain to the next of the Kindred of the Lineage of the Father, the Eldeſt Son was then dead, having a Son, it was adjudged that the Son of the Eldeſt ſhould have the Land, for he is next of the *Lineage*.

For

For Lineage ſhall be taken in a Lineall deſcent, which is the moſt worthy *Line*, *Dy.* 333. *pl.* 29. A Deviſe to the next of Blood, the Son of the Eldeſt Brother ſhall have it before the younger Brother.

If Land be deviſed upon Condition, or rendring a Rent, that is void; for it cannot be good in either caſe, except the Reſervor might take advantage of it, and the Heir cannot have that which his Anceſtor could not. And if a man deviſe Land with *Warranty*, that is void, becauſe the Father was not bound. But to ſome there ſeems a *Diverſity*; for in the laſt caſe there is a Charge to the Heir, and in the firſt it is for his advantage.

If the Lord deviſes Land to his *Villein*, this is an *Infranchiſment* againſt the Heir, and yet he was the *Villein* of the Heir when the Deviſe took Effect.

A man having three Daughters, *deviſes* to them a hundred pound a piece for their marriage Portions, and if any of them die before their Marriage, then the other ſhould have her Portion by Survivor, one dies in the life of the Father, the other ſhall have three hundred pound after the death of the Father, and yet nothing ſur-

vived, for ſhe had nothing in poſſeſſion, yet they ſhall take it by the intent of the Deviſor; for when he ſays, that if any of them die before their Matriage, that the other ſhall have her Portion, this makes it in nature of a Remainder, and then though the firſt Deviſee does die in the life of the Teſtator, yet he in Remainder ſhall take the Eſtate *per Manwood, Dy.* 127. *p.* 59. As a Deviſe to a Monk, the Remainder to another, the Remainder is good.

A. Deviſes Land upon Condition, and if the Condition be broke, that his Executors ſhall ſell the Land, the *Deviſe* as to the Executors is void; for the Heir muſt enter for the Condition broken, and then he ſhall hold it diſcharged of all Conditions.

A. Deviſes twenty pound to *B.* when he arrives at the age of ſix and twenty years, and if he dies before, he *Deviſes* it to *C. B.* releaſes to the Executors of *A.* before he attains the age of ſix and twenty years, if it ſhall be a Bar? *Quare.*

If *A.* Deviſes twenty pound yearly for twenty years, the Deviſee hath no Remedy for his not Iſſuing out of any Land; for he cannot take it as a Legacy, and an Annuity does not lie againſt

againſt Executors, for the Teſtator was never charged.

A Jointure cannot be made by Deviſe, for Land was not then Deviſable, and the Wife was diſcovert when the Deviſe took effect.

If Land be Deviſed to an Alien, and he is made a Denizen before the Deviſor dies, he ſhall take by the Deviſe; for all takes effect after the death of the Deviſor.

Diſablement.

IF I grant an Annuity upon Condition that the Grantee ſhall promote me to a Benefice within ſeven years, within which time I marry, and my Wife dies within the Term, yet the Grantee is diſcharged; for I had once *Diſabled* my ſelf to accept of the Benefice, and he had the Liberty to have tendered it at that time, and I being then Diſabled to receive it, it countervails a Tender and Refuſall. So if I am bound to marry a woman by ſuch a day, and ſhe marries another, and the Husband dies before the day, yet I am diſcharged of my Obligation. But if he who was to be promoted, or married had been a Stranger to the Obligations, it had been otherwiſe.

If

If I am bound to enfeoffe the Obligee before a day, and before the day he takes a Leaſe for yeares of the ſame Land, which expire before the day, yet I am diſcharged; but it had bin otherwiſe if there had been no day limited; for there it is not to be done before requeſt.

A Feoffment is made to Re-infeoffe, the Feoffee grants a Rent Charge, the Grantee brings a Writ of *Annuity*, and recovers, if this be a Diſablement to Re-infeoffe, *Quære?*

Diſagreement.

A Leaſe is made to *Baron & Fem* for the life of the *Baron*, the Remainder to the Right Heirs of the Husband, the Husband dies, the Wife cannot Diſagree, for the Eſtate is determined. But if the Eſtate had been made to them by a Diſſeiſor, ſhe might diſagree to ſave herſelf from Damages. If Land be given to *Baron & Fem* in Fee, and the *Baron* makes a Feoffment, and an Anceſtor collaterall of the Wife Releaſes with Warranty, and dies, the Husband dies, the Wife cannot diſagree and claim her Dower, for her Eſtate was bound, and her Right determined by the Warranty.

If

If the Husband be remitted to an Eſtate, the Wife may diſagree, and claim her Dower.

An Atturnment is good, although he that Atturned doth after diſagree.

Vide Dower, & Baron & Fem.

Diſcharge.

IF the Diſſeiſee enters upon the Heir of the Diſſeiſor, end grants a Rent Charge and dies, the Iſſue ſhall hold it *diſcharged*, for he is remitted to his ancient Right. So if the Heir of the Diſſeiſee enters upon the Diſſeiſor, and grants a Rent Charge, and the Diſſeiſee dies. But if the Son diſſeiſes the Father, and *A.* and the Father dies, he ſhall hold it charged, for he is not remitted. If the Father diſſeiſeth the Grandfather, and grants a Rent Charge, and dies, the Son ſhall hold it diſcharged, for he claims from the Grandfather. Lord, Meſne, and Tenant, the Tenant aliens in *Mortmain*, the Lord enters, and grants a Rent Charge; and after his Title is come, *viz.* the year is paſt, and the Meſne hath not entred, the Lord ſhall hold it diſcharged, and his Iſſue alſo; for he ſhall not be remitted for a Title,

as he ſhall be for a Right accrued.

If the Father diſſeiſes the Grandfather, and dies, and the Son enters, and grants a Rent Charge, and, the Grandfather dies, he ſhall hold it diſcharged, although he was of full age at the time of the Grant. As if Tenant in tail infeoffes his Iſſue within Age, who grants a Rent Charge at full age, and then the Tenant in tail dies, the Iſſue ſhall hold it diſcharged.

If the Diſſeiſor grants a Rent Charge to the Diſſeiſee, who grants it over, and after enters, he ſhall hold it diſcharged. So if Tenant *Pur auter vye* grants a Rent Charge, and the Reverſion deſcends upon him, and *ceſty que vye* dies, he ſhall hold it diſcharged. If a Stranger diſſeiſes the Father, and grants a Rent Charge, and infeoffes the Son, and the Father dies, he ſhall hold it diſcharged.

Land is given to *A.* and *B.* for their lives, the Remainder to the Right Heirs of him who ſurvives. *B.* grants a Rent Charge in Fee, *A.* dies, if the Heir of *B.* ſhall hold it diſcharged, *Quære.* If it had been given to them, *Quam diu ſimul vixerint*, and to the Heirs of him who firſt dies, the Heir ſhall not take the Land by deſcent, but by purchaſe.

A. ha-

A. having a Wife, makes a Feoffment upon Condition, and dies, the Wife is endowed by the Feoffee, and then grants her Eſtate to the Feoffee, reſerving a Rent by Indenture, the Heir enters for the Condition broken, he ſhall hold it diſcharged of the Rent, *Note* her Title to the Land was *Paramount* to the Condition, but *Puiſne* to the Rent.

If a *Dean* hath a Rent Charge in Fee, and the Tenant aliens the Land to the Dean in Fee, the Lord enters for the Alienation in *Mortmaine*, he ſhall hold it diſcharged of the Rent, for when he entred for the Alienation in *Mortmain*, he did not avoid the Livery, but affirm'd it by his Entry. So if the Dean before the Entry had entred into a Statute, the Lord ſhould have holden it diſcharged of the Execution. But if Tenant for life aliens in Fee to him that hath a Rent Charge iſſuing out of the Land, and the Leſſor enters, for the forfeiture, he ſhall not hold it diſcharged: for the Leſſor hath the ſame Feeſimple he had before the making the Leaſe, and has his own Eſtate, and not the Eſtate which the Leſſee gave to the Feoffee. Many think the contrary in the firſt caſe; for his Eſtate in the Land was always defeaſable. *Vide*

Vide Charge, Rent, Execution.

Diſcent.

A Diſſeiſor infeoffes his Wives Father who dies, ſo that the Land deſcends upon the Wife, if the Diſſeiſee may enter, *Quære?*

The Husband ſurrenders the Freehold of his Wife to him in Reverſion, who dies ſeiſed, if the Wife may enter after the death of her Husband? for there ſeems to be a diſcent.

If a Gift in tail, or Leaſe for life be made, rendring a Rent with a Re-entry, for default of payment; the Leſſor hath cauſe of Entry, and the Eſtate in tail expire, or Leſſee for life dies, after a Diſſeiſin, or Deſcent, yet the Leſſor, &c. may enter, for the Land was recontinuable at all times. And if Tenant for years, with a Condition be outed: after the term and a Diſcent caſt, the Leſſor ſhall enter for the Condition broken.

Leſſee for years, the Remainder in tail, he in Remainder grants in Fee, the Leſſee atturns, the years expire, the Grantee enters, and dies ſeiſed, Tenant in tail dies, the Iſſue may enter, for the Grant was but for the life of Tenant in tail, and then he died not

ſeiſed

ſeiſed in Fee, and if the dying ſeiſed had been after the death of Tenant in tail. If it will take away the Entry, *Quære*: But if the Iſſue of the Iſſue of the Grantee had entred and died ſeiſed, the Entry had been taken away. If Tenant in tail infeoffs his Donor, who dies ſeiſed, the diſcent will take away the Entry of the Iſſue, *Quære?*

If there be two Sons, and the youngeſt hath two Daughters, the Grandfather ſeiſed of two Acres at Common Law, and twenty in *Borough Engliſh*, gives the two Acres with the youngeſt in *Frankmarriage*, the youngeſt Son dies, the Grandfather dies ſeiſed, the twenty Acres ſhall deſcend equally to the two Daughters, and the two Acres ſhall not be put in *Hotch poteh*; for the Cuſtom as well as the deſcent makes the Title.

The Diſſeiſor dies without Heir, his Wife *enſeint*, the Lord enters, a Son is born, the Diſſeiſee enters upon the Lord. If the Entry had been before the Birth it had been Lawfull, and he Remitted. If a Stranger abates, the Diſſeiſor having Iſſue, or if after abatement a Son had been born, the Diſſeiſee could not have entred; for the Abator may ſay that the Land deſcended to the Iſſue whoſe Eſtate he has.

If

If the Tenant makes a Feoffment, *Pending the Præcipe* againſt him, the Plaintiffe Recovers, then the Feoffee dies ſeiſed, the Plaintiffe cannot enter upon the Heir; for the dying ſeiſed was after the Judgement, & *Tanta mount*, as if the Feofment and Diſcent had been both after Judgement, and then it had been cleer that the Entry had been taken away; for the Diſcent is the Title, and not the Feoffment. But if the Diſcent had been hanging the Writ, that would not have taken away the Entry. But if a Recovery be had againſt Tenant for life, and he dies, and he in Remainder Enters, and dies ſeiſed, that ſhall not take away the entry of the Recoveror; for all the Eſtate is recovered, and he in Remainder is as *privy* as if the Action had been brought againſt him immediately, ſo of him in Reverſion. *Br. Ent. Cong.* 116.

The King being ſeiſed, *A.* intrudes, the King Grants it away, *A.* continues in poſſeſſion, and dies ſeiſed, this Diſcent will not take away the Entry of the Grantee, for then he were without remedy, as if Land be deviſed, and a Stranger *Abates*, and dies, that ſhall not *toll* the Entry of the Deviſee.

Discontinuance

IF Land be given to two, and to the Heirs of the body of one, and he which hath the Estate in tail makes a Feoffment, and both die, this is no Discontinuance, for any part; for he was not seised of the Estate in tail at the time of the Feoffment.

If Tenant in tail makes a Lease for life, the Remainder for life, and after Releases to him in the Remainder, and his Heirs, this is a Discontinuance. If the first Tenant for life dies in the life of Tenant in tail. If Tenant in tail makes a Gift in tail to *A.* and after Releaseth to him in Fee, and dies, and *A.* dies without Issue, the Issue in tail may enter upon the collaterall Heir of *A.* for the Fee was not Executed in the life of Tenant in tail, though it passed out of him. *Quere* of all these cases.

If the Grandfather be Tenant in tail, and makes a Gift to *Baron & Fem* in tail, the Husband dies without Issue, the Grandfather dies, the Father Releases to the Wife, being *Tenant after possibility*, and to her Heirs, and dies, the Wife dies, the Issue cannot enter upon the Heir of the

Wife; for though it be no Discontinuance, yet when the Wife came to the Fee simple, the Fee was Executed, and then she died seised in Fee, and the Discent takes away the Entry. But if the Wife had been Tenant in tail, and then she had died without Issue, it had been otherwise; for then she had not died seised, but of an Estate tail in possession, and a Fee in Reversion, and that will not take away an Entry.

If Tenant in tail infeoffes the Wife of the Donor, that is a *Discontinuance.*

If Tenant in tail infeoffes the Donor and a Stranger, that is a *Discontinuance* of all for the benefit of the Stranger. If Tenant in tail of a Rent grant that in Fee, that is no *Discontinuance*, for the Grant endures no longer than for his own life.

If Tenant in tail makes a Lease for the life of the Lessee, and then disseises him, and makes a Feofment in Fee, the Lessee dies, and Tenant in tail dies, that is no Discontinuance; for the Fee was not Executed by lawfull means.

So if Tenant in tail makes a Lease for life, and grants the Reversion, the Grantee disseises Tenant for life,

Tenant

Tenant for life, and Tenant in tail die, this is no Discontinuance, for the Fee was not executed according to the Grant. But if Tenant in tail makes a Lease for her own life, and disseises Tenant for life, and makes a Feofment, that is no Discontinuance; for by the Disseisin he was seised in Fee, and the Fee was devested out of the Donor, and then he was not Tenant in tail. The first case seems cleerer, if Tenant in tail dies, living Tenant for life. If Tenant in tail makes a Lease for the life of the Lessee, who is disseised, and Tenant in tail Releases to the Disseisor without *Warranty*, Tenant for life, and Tenant in tail die, this is a Discontinuance in Fee; for the Disseisor had the same Fee executed in the life of Tenant in tail which was first made, as if he had after Released to Tenant for life, which would have countervailed an Entry and Feofment.

A. makes a Gift in tail to *B.* who makes a Gift in tail to *C.* who makes a Feoffment, and dies without Issue. Nothing made a Discontinuance to the Issue of *B.* but the Livery of *B.* for by that the Reversion of the Donor was discontinued. But when *C.* died without Issue, that Livery is de-

termined, and the Discontinuance purged; and the Feofment of *C.* being a Stranger to the first in tail, cannot be a Discontinuance, especially when there was but a Right of the Intail discontinued by the Feofment of *B.* and a Right cannot be discontinued.

If Tenant in tail be disseised, and Releases to the Disseisor with Warranty, and is attainted of Felony, and hath his pardon, and dies, that is a Discontinuance; for if he had purchased the Land after his pardon, it should have gone to his Issue, which proves that the blood between him and his Issue is not corrupt, as it is between him and his Ancestor; then seeing the *Warranty* was in being at the time of his death, there is no Impediment but that it should descend.

Disseisor.

LOrd and Tenant of twelve Acres by twelve pence, the Tenant makes a Lease of one Acre for years, the Lessee enfeoffs the Lord, he may avow for eleven pence; for though he is a Disseisor by the Statute, yet to another intent he is in by Feoffment; for if Lessee for years infeoffs two, a

Releaſe to one will inure to both.

If there be two Diſſeiſors of a houſe, to which Eſtovers are appendant, and a Releaſe is made to one, the Eſtovers Remain for part, for the Releaſe doth not countervail an Entry and Feoſment.

If the Lord procures one to diſſeiſe the Tenant, and then the Diſſeiſor *Ceaſeth*, and the Lord Recovers, he ſhall retain againſt the Diſſeiſee; for the procurement does not make him a Diſſeiſor, 50 E. 3. 2. *v. Lit. in Remit. cont.* If the Iſſue in tail procure one to Diſſeiſe the Diſſeiſor of his Father, whoſe Heir is in by deſcent, againſt whom the Heir recovers, the Iſſue ſhall retain it.

If the Diſſeiſor makes a Feoffment, and marries with the Diſſeiſee, he may enter in his Wives Right.

After a Diſſent, if the poſſeſſion comes to the Diſſeiſor, the Diſſeiſee may enter, for the Action remains to him after the deſcent.

If one Diſſeiſes Tenant for life to the uſe of him in Reverſion, and he agrees, if he ſhall have the new Fee, or the ancient; for now he is a Diſſeiſor *ab initio*. If he had been a Diſſeiſor immediately he had gained but a Freehold by *Tort*, but now he Agrees

to that which another hath, and that is a Fee.

If one Jointenant makes a Leaſe for years of his part, a Stranger enters, claiming the Moity of the other, who waives the poſſeſſion, that is a Diſſeiſin to him, though the Termer continues in poſſeſſion; for they were Tenants in Common. Otherwiſe, if the Termor had waived the poſſeſſion, and the other had continued in; for the Reverſioner cannot be out of poſſeſſion when his joint companion held in.

Divorce.

A Reverſion is granted to *Baron & Fem*, and to a ſingle man and Woman in Fee, the ſingle perſons marry and the Tenant Atturns, then the ſingle man and woman are divorced, the *Baron & Fem* ſhall have but a third part.

Land is given to *I.* and *A.* his Wife, and to another *Baron & Fem* in Fee, they are diſſeiſed, and *I.* releaſes to the Diſſeiſor, and then *I.* and *A.* are divorced, for cauſe which hath relation. *A.* and the *Baron & Fem* bring an Aſſiſe, leaving out *I.* Some think it is maintainable; for when *I.* and *A.* are

are divorced, yet the other *Baron & Fem* ſhall hold the Moity to them; for being the purchaſe took effect, and veſted by the Livery, and at that time the *Baron & Fem* not being divorced took a Moity, which remains ſtill.

A Leaſe for life is made to a *Fem ſole*, ſhe marries, the Leſſor grants the Reverſion, the Husband atturns, and after they are divorced, yet the Wife cannot avoid the Atturnment.

A woman is divorced, upon a ſurmiſe made by the Husband, of a *Precontract* upon her part: the Wife being ſeiſed of Land makes her Will, and deviſes it away, an Appeal then depending by the Husband to defeat the Divorce. *Quære*, if the Appeal be not void, being ſued by the *Baron*; for he is not the party grieved; for he was the firſt Agent in the Divorce, and therefore it ought to have ben ſued by the Wife, and ſo the Deviſe ſtands good. 2 *R.* 2. *Quare Impedit.* 143. *Dy.* 140. *p.* 46. 4 *H.* 7. *Peckams caſe*, 10 *H.* 7. 12. 24 *H.* 8. *Raviſhment.* 11. 39. *E.* 3. 33.

A man marries an Infidel, the Wife commits Adultery, and then becomes a *Proſelite* to the Chriſtian Religion. *Quære*, if this Adultery, committed before her Converſion, be a ſufficient

cauſe whereupon the Husband may ſue a Divorce?

Dower.

LAnd is given to Husband and Wife in ſpeciall tail, reſerving a Rent, the Wife of the *Donor* brings Dower againſt the Heir of the Husband, for the third part of the Rent.

A. having a Daughter dies, his Wife enſeint, with a Son, the Daughter diſclaims, the Lord Recovers, in right of the *Diſclaimer*, a Son is born, the Lord dies, and the Land deſcends to his Son, the Wife of the Lord brings Dower againſt him.

A. grants a Rent Charge in Fee, to commence after the death of the Grantee, who dies, the Wife of the Grantee ſhall not be endowed, and yet the Son takes as Heir. But it was not in the Father, and it ſhall not be Aſſetts in the Heir. But if the Rent had been granted upon Condition, that if the Grantee, or his Heirs die, their Iſſue within age, that the Rent ſhould ceaſe until the Iſſue comes of full age, if the Grantee dies, his Iſſue within age, his Wife ſhall be endowed, but the Execution ſhall ceaſe until the heir be of full age. As if the Tenant

be

be in Ward to the Lord, and the Lord marries, and dies poſſeſt of the *Ward*, his Wife ſhall be endowed of the Seignory, which was in ſuſpence; for the Freehold was in the Husband, ſo in the laſt caſe before, 24 *E.* 3. the Wife of the Father brought a Writ of Dower againſt the Heir within age, and Recovered, but *ceſſat Executio* until, &c.

If the Heir doth Improve the Land, the Wife ſhall recover her Dower of it as it is. But if it be by building, or other collaterall Improvement, 'tis otherwiſe. *Quære*, if the Heir ſuffers the Houſes to decay upon the Land, if the Wife ſhall be endowed according to the value it was in the poſſeſſion of her Husband, or as it is now, and ſhall be allow'd in Damages?

The Son of the Diſſeiſor endows his Wife *Ex aſſenſu patris*, the Diſſeiſee releaſeth to the Diſſeiſor, if the Dower ſhall be avoided?

The Tenant Ceaſes for two years, and after marries, the Lord Recovers in a *Ceſſavit*, the Tenant dies, his wife ſhall be endowed againſt the Lord.

If a Rent be reſerved upon a Leaſe for life, the Wife ſhall not have dower; for he hath not a Fee, neither ſhall the Heir have an *Aſſize of Mortdanceſtor*.

If

If a Diſſeiſor grants a Rent Charge, and is diſſeiſed, and a Releaſe is made to the ſecond Diſſeiſor, the Wife ſhall not be endowed, for her Dower is Executory.

If a Woman hath cauſe to have Dower of one and the ſame Acre, as Wife to *A.* and *B.* If ſhe be barr'd as Wife to *A.* yet ſhe ſhall have it as Wife to *B.*

If a Leaſe be made to *Baron & Fem* for the life of the Husband the Remainder to the Heirs of the Husband, who dies, the wife ſhall not have Dower; for ſhe cannot diſagree to an Eſtate determined. If Land be given to *Baron & Fem* in Fee, the Husband makes a Feoffment, an Anceſtor collateral of the Wife, releaſes with *Warranty*, and dies, the Husband dies, the Wife cannot diſagree, and claim her Dower where the Eſtate was bound, and her Right determined by the *Warranty.*

If a *Villaine* purchaſe an Eſtate in tail, the Lord enters, and dies, his Wife ſhall not have Dower; for being the Law gave unto him his Entry, the Law will not give more to him than the *Villein* might lawfully give, which was an Eſtate for his own life. If Tenant in tail, the Reverſion in the King be

be diſſeiſed, the Diſſeiſor dies, his Wife ſhall not recover her Dower, no more than if a Diſcontinuance takes away an Entry.

If there be two Tenants in Common, and one hath a Wife, and the Reverſion is granted to both of them, and he which hath the Wife dies, the Wife ſhall be endowed of a third part of a fourth part, if the Reverſion paſſed ſeverally; for then the Reverſion and the Fee are Executed for the fourth part.

A Gift in tail is made rendring, during the life of the Donor, *Socage tenure*, and after his death Knight ſervice, the Wife ſhall be endowed of the Knights ſervice.

If a Rent be granted for life, and after by another Deed the Grantor releaſes all his Right in the Rent, and if it be behind, that the Grantee and his Heirs ſhall diſtrain, the Wife ſhall not be endowed; for it is ſtill but a Rent Seck, and the diſtreſs a Penalty, 8 *H.* 4. 18.

A Diſſeiſor having a Wife makes a Leaſe for life, the Leſſee makes a Leaſe to the Wife for her life, the Husband accepts the Deed, and agrees to it, the Husband dies, the Wife diſagrees to the Leaſe, the Leſſor Enters againſt whom

whom she brings *Dower*. It is cleer, if a Disseisor, having a Wife, makes a Lease to *A.* for life, who makes a Lease to B. for life, and the Disseisee releaseth to *B.* the Wife of the Disseisor shall be endowed; for the Release does not countervail an Entry and Feoffment. If a Disseisor be Disseised, and the Disseisee releaseth to the second Disseisor, that takes away the Dower of the first Disseisors Wife. But in the first case the Husband is remitted, and no possession in the Wife whereupon a Release may operate, and so she may disagree and claim her Dower.

If an Estate be confirmed in a Rent Seck, and if it be behind, that it shall be lawfull for him and his Heirs to distrain, the Wife shall not have Dower; for it is stil but a Rent Seck, and the Distresse but a penalty.

Tenant in tail of a Rent discontinues it with *Warranty*, the Issue having a Wife, is barr'd in a *Formedon* by the Warranty and Assetts, yet his Wife shall be endowed; for the Grant was void by the death of Tenant in tail, and the Issue had possession in Law, and might have distrained, and though he determined his Election, yet it shall not prejudice his Wife.

If the Husband disagrees to a Remainder,

mainder, the Wife ſhall not be endowed, otherwiſe to a Diſſent. If a Rent Charge is granted, the Grantee dies, the Heir cannot prevent the Wife of her Dower by bringing his Writ of Annuity.

The Son endows his Wife *Ex Aſſenſu Patris*, the Son is attainted. If ſhe ſhall retain her Dower? Some think ſhe ſhall not; for ſhe claims from the Son, and *Ne unques accouple in loyall Matrimony* is a good plea.

If Tenant for life ſurrrenders upon Condition, and the Leſſor marries and dies, the Wife is endowed againſt the Heir, the Leſſee enters for the Condition broken, the Wife ſhall not have the Reverſion; for the Freehold which was the Wives Title is taken away by the Entry. If the Grandmother recovers Dower againſt the Mother, ſhe hath taken away all the eſtate of the Mother; for ſhe comes in upon an *Eigne Title*. But otherwiſe if the Father had been infeoffed. So if the Leſſor diſſeiſeth his Tenant for life, and marries, and dies, and the Wife is endowed by the Heir, the Leſſee enters, &c. And if Leſſee for life had died before the Wife had been endowed, ſhe ſhall not be endowed; for the Heir was Remitted, or if ſhe had been endowed, and the Leſſee

Leſſee had died, the Heir ſhall out her. If the Mother recovers Dower againſt the Son, & the Grandmother recovers Dower againſt the Mother, and dies, the Son ſhal enter and not the Mother. But if the Dower of the Mother had been by Aſſignment of the Heir, it had been otherwiſe. For he ſhal be concluded by his own Aſſignment, *Quære?* For ſome think the Reverſion is not taken away from the Mother in *Caſu penultimo.*

If a Feoffment be made to *A.* to the uſe of *B.* the Wife of *A.* ſhall be endowed.

A. marries and ſells his Land, his Wife arrives at her age of nine years, the Husband dies, ſhe ſhall be endowed; though the Husband had no poſſeſſion when ſhe was nine years old: For if the Husband aliens his Land, and after the Wife is attainted and pardoned, the Husband dies, ſhe ſhall recover her Dower. If a woman *Elopes*, the Husband aliens his Land, and after they are Reconciled, ſhe ſhall have her Dower; for in theſe caſes the Title of Dower is not conſummate until the death of the Husband. But if a man marries an Alien, and then ſells his Land, and ſhe is Endenized, and the Husband dies, ſhe ſhall not have her Dower.

If

If a Tenancy Eſcheats, the wife of the Lord ſhall not be endowed of the Seignory.

A woman Intitled to have Dower, diſſeiſeth the Tenant, and ſhe is diſſeiſed by another, to whom the Diſſeiſee releaſeth, ſhe ſhall not have her Dower; for her Dower was ſuſpended in the poſſeſſion of the Diſſeiſor as well as if it had been in her own poſſeſſion; for the Diſſeiſor is in as the woman was, and though her Dower ſhould have been Revived if the Diſſeiſee had entred; yet this Releaſe doth not amount to an Entry and Feoffment.

If Land be given to *A.* and his Heirs Males as long as he hath Iſſue Female of his body, *A.* dyes having a Daughter, the Wife is endowed, and the Daughter dies without Iſſue, the wife loſeth her Dower; for there is a difference between a Condition in Deed, and in Law; for if the Iſſue of Tenant in tail dies without Iſſue; yet his wife ſhall keep her Dower; for it is a Condition in Law. And yet if an Eſtate tail be made upon Condition, that if the Donee dies without Iſſue, that it ſhall be lawful for the Donor to re-enter, the Wife of the Donee ſhall not loſe her Dower; for the Condition does not take effect untill the eſtate be deter-

determined by the Condition in Law, upon which determination she is endowable.

A. seised in Fee grants a Rent Charge, and aliens, and takes an Estate in Fee-simple, or in tail, and dies seised, the Wife Recovers in Dower, and then she surmises that her Husband died seised, and prays a Writ of *Enquiry* of *Damages*, 14 *H.* 8. 6. She shall hold it charged; for she hath admitted her self dowable of the second Estate.

A. has a Wife, and is seised of four Acres, and makes a Feofment of three of the Acres with *Warranty*, and dies, the Wife brings her writ of Dower against the Feoffee, and he vouches the Heir. Now if the Wife may stop the Judgement, *viz.* That she shall not recover immediately against the Heir is the question; for then she hath lost her Dower of the fourth Acre, as some think she hath, because it was her own folly that she did first recover her Dower of that.

Election.

IF a Rent be granted in Fee, and the Grantee grants it over for yeares, the Grantee for years hath no Remedy, if it be denied him; for he shall not

not have a writ of Annuity; for the Election is given only to the first Grantee and his Heirs, and the Election runs only in privity. If two Acres are given to *A. Habendum*, the one in Fee, and the other for life, and *A.* grants both over, *viz.* the one in Fee, and the other for his own life. If the second Feoffee shall have Election? If *A.* had committed waste in both, or had made a Feoffment of both, the Lessor might have entred into which he had pleased. If I give two Acres, the one in Fee, the other for life, and the Donee dies without Heir, *Quære*, if the Lord shall have Election? If a Lease be made of two Acres, the Remainder of one to *A.* and of the other to *B.* and makes no certain description of either. He who first enters after the death of Tenant for life, shall have the Election.

If a Lease be made of two Acres, *Habendum* the one in Fee, and the other for life, reserving a Rent, *Quære* how the Lord shall avow? But his Executor hath no Remedy by the statute of 31 *H.* 8.

If *A.* grants to another one of his horses, the Grantee dies before his Election, his Executor shall choose; but yet there was no property in the

Grantee before Election. If two Acres are granted, the one in tail, and the other in Fee, the Heir of the Donee shall make his Election.

If twenty shillings, or a Robe is yearly granted at the Feast of Easter, at the day, or before the day, the Grantee hath Election. If it had been by Obligation, the Obligor shall have the Election after the day. But if one grants to another twenty loads of wood, or twenty Oaks yearly at the day or after, the Election is in the Grantee, for it lies in *Prender*, so that there is a a Difference betwixt a thing in *Payment* and in *Prender*. 13 *E.* 4. 4.

If a Lease for life be made, reserving a Rent, or a Robe at the day, it is in Election of the Lessee, but after in the Lessors.

A Reversion is granted to one for life, and before Atturnment it is granted to him in Fee, the Grantee may choose his Estate.

If an Acre is given *Habendum* in Fee, or in tail, the Donee shall choose. If one be bound, or Covenants to infeoffe *B.* of the Mannor of *D.* or *S.* the Obligor, &c. hath the Election; for he is the first Agent. But if I give my black horse, or white Horse, there the Donee hath the Election; for there he

he is the first Agent. But otherwise if the words had been that I should deliver also. If I infeoffe *A.* and B. and warrant the Land to the one or the other, there is no Election given to either, and therefore void. But if one be bound to me to pay to A. or B. there the Obligor hath the Election; for he is the first Agent, but in the other case it ought first to be demanded. A. gives two Acres, *Habend.* the one for life, the other in Fee, reserving a Rent or a Robe, and does not distinguish which he shall have for life, and which in Fee. B. makes a Feoffment of both, the Rent is behind. A. distrains in one only, and makes an Avowry for the Robe in that Acre. *Quere bien.*

If a Rent be issuing out of two Acres, the Tenant grants one to another, the Grantee may choose in which he will distrain for all.

A. disseises *B.* of twenty Acres in *C.* *B.* brings a writ of *Entry sur Disseisin* in ten Acres, and recovers, and comes upon the Land, and enters into one Acre in the name of all he recovered, and thereof presently infeoffs *D.* who enters into the other nine Acres, *A.* brings an *Assize* for those nine Acres, and it is maintainable; for by the entry of B. into one Acre in the name

of all he recovered, nothing veſted in him but that Acre; for it was a determination of his Election which nine Acres he would have, for it was incertain, and then nothing paſſed by the Feoffment but that one Acre, for the Feoffee being a ſtranger ſhall not make Election, which runs in *Privity.*

Emblements.

A Woman hath Title to have dower of three Acres, and after the Heir ſows one of the Acres, and ſhe hath that Acre aſſigned to her in dower. *Quere* if ſhe ſhal have the Emblements; for, no folly can be imputed to the Heir; for the poſſeſſion was caſt upon him by the Law, and when he did ſow the Land it was uncertain to him whether ever the wife would recover her dower, neither could he gueſſe which Acre would be aſſigned her in dower. and the Heir ſhall take advantage of this incertainty. As if the Condition be performed by the Mortgagor, yet the Mortgagee ſhall have the Emblements. If a man deviſe that his Executors ſhall ſell his Land, and before the ſale the Heir ſows the Land, and then the Executors ſell it, yet the

Heir ſhall have the *Emblements*, 36 *H.* 6. 36. If the Heir ſows the Land, and is diſſeiſed before ſeverance, and the Diſſeiſor endows the wife of the Father. Some think the Heir ſhall not have the *Emblements*; for ſhe is ſuppoſed to be in, in the *Poſt* by the Diſſeiſor, *Quere.*

Entry.

GRandfather, Father, and Son. The Father diſſeiſeth the Grandfather and dies, the Son endows the Mother, the Grandfather dies, the Son may enter upon the Mother; for he hath a new Right deſcended to him from the Grandfather, for the Grandfather might have entred upon the Mother, ſo ſhall his Heir. But if there be Great Grandfather, Grandfather, Father, and Son, and the Grandfather diſſeiſes the Great Grandfather, and the Father dies, and the Son endows the wife of the Father, and the Great Grandfather dies, the Son ſhall not out the Tenant in Dower; for the Great Grandfather could not enter by reaſon of the deſcent, no more can his Heir.

If a disseisor makes a Lease for life, the Remainder in Fee, and the disseisee purchaseth the Remainder, and grants it over, he cannot enter upon the Lessee for life, for then he should defeat his own Grant.

A Feoffment is made, upon Condition to re-infeoffe, the Feoffee makes a Feoffment to his use. If the Feoffor may enter without Request? If *A.* makes a Feoffment, reserving a Rent, and if it be behind a Re-entry, after he releaseth the Rent when he hath Title or Entry, he cannot enter after, or if he granted the Rent over after his Title of Entry.

The Eldest Son cannot enter where the Reversion is descended to the youngest by the Custom.

A Seignory is granted in tail, the Tenant aliens in mortmain, the Grantee dies within the year without Issue, the donor shall enter, as well as he in Remainder; for there is a Privity of Estate.

If two Acres descend to *A.* and a stranger abates into one, and *A.* enters into the other in the name of both, that shall not gain the possession of the other. But otherwise if he had entred into that Acre wherein the Abatement was in the name of both.

Te-

Tenant for life of a Seignory, a Tenancy Eſcheats, a ſtranger intrudes, Tenant for life dies before Entry, he in Reverſion may enter, as upon the Diſſeiſor of his Tenant, but if he dye and his Heir in by Deſcent, he cannot enter.

After a Diſcent the Diſſeiſee abates, the wife of the Diſſeiſor recovers dower by confeſſion, if the diſſeiſee may enter?

A Leaſe for life is made, rendring a Rent, with a Re-entry, for default of payment, the Leſſor hath cauſe of Entry, the Leſſee is diſſeiſed, and a diſcent caſt, the Leſſee dies, the Leſſor may enter; for the Land was alwayes recontinuable by Entry. If Leſſee for years upon Condition be outed after the term, and a diſſent caſt, the Leſſor ſhall enter for breach of the Condition.

Eſcheat.

IF Leſſee for yeares makes a Feoffment, and the Leſſor dies without Heir, the Lord ſhall not enter for the Eſcheat; for it is a good Feoffment againſt him.

A. infeoffs B. ſo long as *Paul's* Steeple ſhall ſtand. B. dies without Heir,

if the Land ſhall Eſcheat?
Vide *Attainder & Baſtard.*

Eſtate.

IF a Leaſe be made ſo long as A. and B. ſhall be Juſtices, if one of them be removed, the Eſtate is determined; for the time was in the Copulative, and a Collaterall determination. But if it had been during their lives, and one of them had died, the Eſtate had continued.

A. hath Iſſue a Son and a daughter, Land is given to the daughter, and to her Heirs Females of the body of the Father begotten, ſhe hath not Eſtate tail but for life only. *Inſt.*

If a leaſe be made to a *Dean* and *Chapter* for their lives, they ſhall have a Fee; for they never die.

If a Rent of twenty ſhillings a year be granted until the Grantee ſhall receive twenty pound, the Grantee hath an Eſtate but for twenty years; for it is certain. So if it had been granted untill *A.* ſhall arive at his full age, he takes but for years. If Land of twenty ſhillings a year value be granted until he ſhall receive twenty pounds out of the Iſſue and profits, and Livery be made, he takes an E-

ſtate

ſtate for life, by reaſon of the uncertainty of the profits. If *A.* makes a Leaſe for life, reſerving a Rent, and if it be behind, that he ſhall enter and retain, til he hath received the Rent out of the profits of the Land, all the Eſtate of the Leſſee is defeated. 30 *E.* 3. 7.

If *A.* hath two Daughters, and the Eldeſt gives Land to the youngeſt, and to the Heirs of the body of the Father begotten, there paſſeth but an Eſtate for life; for the donor is one of the Heirs, and it cannot be an eſtate tail in her ſelf of her own making, and it cannot inure to the other; for ſhe is not Heir. But if it had been given to the youngeſt, the eldeſt being born out of the Realm, it ſhall go to him.

Eſtopple.

IF a *Præcipe* be brought againſt the Father of the Sons Land, and he loſeth, and the Son after the deceaſe of the Father brings a Writ of error to reverſe the Recovery, and Judgement is affirmed, the Recoveror may enter upon the Son; for by bringing his writ of Error, he is Eſtopped to ſay, that his Father was not ſeiſed.

If an Infant delivers a deed which bears date two years after, and at the end of the two years he is of full age, he ſhall not be Eſtopped to ſhew the delivery before the date, neither ſhall a *Fem Covert.*

Husband and Wife ſeiſed, and to the Heirs of the Husband, the Husband makes a gift in tail, the Wife recovers againſt the donee in a *Cui in vita*, ſuppoſing that ſhe hath a Fee, and dies, and the donee dies, and the Iſſue of the Husband and Wife brings a *Formedon in Reverter*, and though he was Heir to the Wife, he ſhall be Eſtopped to ſay, that he had a leſſer eſtate than in Fee, yet the Iſſue, who claims by the Husband ſhall not be Eſtopped.

Vide *Dower.*

Eſtover.

A. ſeiſed of an houſe on the part of his Mother, and Eſtovers are granted to him in Fee, and he dies without Iſſue, the Eſtovers are extinct. If there be two diſſeiſors of a houſe, and they have Eſtovers granted to them to be imploied in the ſame houſe, and the diſſeiſee releaſeth to one, the Eſtovers remain for part.

If

If one hath Estovers in certain in ten Acres of wood, and five of them descend to him, he shall not take the whole out of the residue.

Exchange.

IF *A.* exchanges twenty Acres with B. for ten of equall value, B. is impleaded, and loseth ten Acres, vouching A. and recovering in value, he shall have all the ten Acres again which he gave to A. and retain the ten Acres Residue without Warranty for the folly of *A.*

If A. exchangeth Land with B. in Fee, who infeoffs a stranger, one ousters into the Land of A. by Title *Paramount*, he cannot enter upon the Feoffee of B; for the privity of the Exchange is determined by the Feoffment. If A. and B. exchange Land, and A. makes a Lease for life, B. is impleaded, and recovers in a *Warrantia Charte*; and hath execution of other Land, the Tenant for life dies, A. enters, upon whom a stranger enters by Title *Paramount*, he hath no remedy for the Land rendred in *Value*; for that doth not go in privity as the Exchange doth. If A. and B. exchange Land, and A. dies in a *Precipe* against B. he vouches the Heir

of

of *A.* who enters into Warranty, and cannot bar the Demandant, by which he recovers; and *B.* over in *value*, the Demandant enters, if *B.* may enter upon the Heir, or is chased to his *Habere facias ad valentiam?* Some think he may enter; for a descent is not material against a Condition, as this is; for if there had been an express Condition, he might have entred, and so he may now. But if part of the Land exchanged had been recovered against *B.* he could not have entred, for he shall not be his own Judge of the portion. But where all is recovered, the whole Exchange is avoided, and therefore he may enter. If one Exchangee makes a Feofment of his part, the other shall not enter upon the Feoffee, for the Condition is determined and dissolved. But *Quære*, if after the Feofment the other may vouch? If two Acres are exchanged for a Mannor, and a stranger enters by title *Paramount* into one Acre, he shall enter into all the Mannor, for it is an entire thing. And *Quære* if he shall retain the other Acre?

Execution.

IF Tenant in tail with a Remainder over with *Warranty* recovers in value

lue, and dies before Execution, he in Remainder ſhall ſue Execution; becauſe he is privy. If Tenant in tail dies without Iſſue. If a man Recovers in *value* Land in Burrough Engliſh. *Quære*, if the youngeſt Son ſhall ſue Execution? But if the Iſſue in tail recovers in a *Formedon*, and dies without iſſue before Execution, the Donor cannot enter, or have Execution. If tenant in tail diſcontinues, and dies leaving a daughter, his Wife *Privement Enſcint* with a Son, the daughter recovers in a *Formedon* and dies, the ſon born cannot enter, or have Execution. But if the Iſſue in tail recovers againſt the *Diſcontinuee*, and after is attainted of Felony, his Iſſue ſhall enter, or ſue Execution, for he is privy in Eſtate. Tenant in tail recovers in *value* by *Voucher* of the donor, and is attainted of Felony, his Iſſue ſhall not have Execution.

If the Son hath the Land of the Father, and of another in Execution upon a Statute, and the Land deſcend from the Father to the Son, the whole Execution is diſcharged.

In Judgement for debt the party ſhall not have Execution, but of that Land only which he had at the time of the Judgement, and not at the time

of

of the purchase of the Writ. But in debt against the Heir, if he aliens hanging the Writ, it shall be liable to the Execution, although the alienation was before the Judgement; for the Action was conceived against him in consideration of the land; but in the first case it was in respect of the person.

The Conisor of a Statute is in Execution, and his Land also, the Conisee releases to him all debts, the Execution is discharged by this Release; for the debt was in being, until it was levied of the profits, but though the Execution be discharged by the party, yet until it be discharged in fact, if the Goaler had suffered him to go at large, he could not have said but that he was in Execution.

Executors.

IF a Lease for years be made, reserving a Rent upon Condition of Reentry for not payment. If the Executor breaks the Condition, so that the Lessor re-enters, it is a *Devastavit* in them, otherwise if the Condition were performable on the part of the Lessor. *Br. Extinguishment* 54. for every voluntary act of the Executor,

by

by which the Goods of the Teſtator are conſumed without any benefit to the Teſtator, is a *Devaſtavit*. But if an Executor having ſuch a term as Executor purchaſeth the Reverſion, that is not a *Devaſtavit*; for the Term, as to *Aſſetts* is in being ſtill. If a man Mortgages his Term and dies, and his Executors do not redeem it; ſome think it is a *Devaſtavit*. If they have *Aſſetts* in their hands wherewith to redeem it, and the Term be better than the price of the Redemption, ſo if an Executor ſells a term under the value, by which the Creditors loſe their Debts, this, ſome think, is a *Devaſtavit*. But if a man be poſſeſt of a term, and deviſes it to his Executors to be ſold *Meliori modo quo poſſunt* for payment of his Debts, they ſell it under the *value*, that is no *Devaſtavit*; for it may be it was the beſt price they could get.

If Husband and Wife make a Leaſe of the Wives Land, reſerving a Rent, the Husband diſtreins and avows, and has a Return and dies, the Cattle are diſcharged; for the Executors cannot have them; for they are but as a Pledge, and being the Executors cannot pretend any Right to the duty, they cannot detain the Pledge; for the

the Wife is to have the Duty. *Vide* 33 *H.* 6. 48.

If a Rent Charge be granted in Fee, the Grantee dies without Heir, the Executors ſhall not have an Action of Debt for the Arrerages. But if the Grantee had brought a writ of Annuity, and Recovered, then the Executors ſhould have an Action of Debt for the arrerages; for if the Inheritance of a Rent determins, the Arrerages are extinct, otherwiſe of an Annuity.

If a Grant be made of a Robe, or twenty ſhillings, and the Grantee dies before Election, his Executors cannot demand the Arrears.

The Executors of a Grantee for years of a Rent Charge ſhall have Election, either to have an Action of Debt, or Annuity.

If a man be bound in twenty pound, and his Executors have but ten pound, an Action of Debt lies againſt the Heir for all; but if he chooſeth the Executor he cannot ſue the Heir for the Remnant. If an Obligor in twenty pound hath Goods to the value of ten pounds only, and makes the Obligee his Executor, he ſhall retain that as parcell of the Duty, and for the reſt bring his Action againſt the Heir; for

it

it is by the act of the Law that the duty is apporcioned.

If *A.* by Deed gives the Mannor of *D.* with all the Woods to *B.* if Livery be not made, the Executors ſhall have the Woods.

If there be two Wills, and the Executor of the laſt refuſeth before the Ordinary, yet the firſt is revoked by the intent of the Teſtator. If the Executor Releaſes a duty of the Teſtator, this is ſo much an Adminiſtration, ſo that he cannot after refuſe, but yet if he doth after avoid the Releaſe, he may refuſe.

A Leaſe for life is made, rendring a Rent at *Mich:* and the *Annunc:* the Land is ſowen at *Mich:* and the Leſſee dies, if the Executors ſhall have the Land untill the Corn be ripe, if they ought to pay the Rent? Some think the Leſſor may have an Action upon the caſe; for the Executors have the profits of the Land, &c. and no fault in the Leſſor: As if a gift in tail be made, Reſerving thirty Shillings, and the Donee dies without Iſſue and the Wife is endowed, ſhe ſhall pay ten ſhil-ſhillings, and yet the Eſtate is determined, but ſhe claims under the Eſtate of the Husband.

A man makes a Leaſe for life reſerving a Rent, upon Condition that if the Rent be behind, that the Leſſor ſhall enter, and retain untill he be ſatisfied of the Arrears, he enters and dies, his Executors ſhall not retain; for the Arrears were not Chattles at the beginning, and therefore they ſhall not retain the Land as a *Gage*, as they ſhall do for the double *value*; for that was a Chattle at the beginning. But in the firſt caſe the Arrears are given to the Executors by the Statute of 32 *H.* 8. Yet being the Arrears were no Chattles at the firſt, and ſo not due to them by their own nature, therefore they ſhall not retain. As in 15 *E.* 4. 10. In *Reſcous* there it is ſaid, if the Defendant in a Replevin avows for a Rent due to him and his Wife, and upon that he hath a Return and dies, the Tenant ſhall have his Cattle back again without any Agreement, becauſe the Executors could not have the diſtreſſe, being they could not have the Rent, but the Wife was to have it.

If an Executor delivers a Legacy upon Condition, it is no good delivery.

The *Debtee* and another are Executors to the Debtor: the *Debtee* recovers againſt

againſt the other, and after Adminiſters with the other, and then ſues Execution by *Scire facias*: If the other ſhall have an *Audita Querela*? and in whoſe name it ſhall be ſued, or if the property ſhall be altered in the Recoveror? or if Execution be diſcharged? but ſome think that Execution cannot be ſtopt, but the Recoveror ſhall have it to the uſe of the Teſtator.

Vide *Condition & Debt.*

Extinguiſhment.

THe Tenant holds ten Acres by ten pence, and makes a Feofment of one, the Lord grants the Rent, reſerving the Fealty, the Tenant Atturns, the Grantee releaſeth all his Right in the Land to the Tenant, yet he ſhall have one penny.

If the Tenant deviſeth, that the Lord ſhall make a Feoffment of the Tenancy, which is done, yet the Seignory is not extinct, no more than the Rent Charge ſhall be where the Grantee makes Livery as Atturny to the Tenant of the Land, becauſe he doth it *in auter droit.*

A Rent Charge is granted upon Condition, the Grantor makes a Feofment, the Condition is broke, the

Rent is arrear, if the Condition be extinct by the Feoffment; for the Grantor cannot have it in the ſame manner, &c. But if the Condition had been that the Rent ſhall ceaſe upon the *Non performance*, there the Feoffee ſhall take advantage of it; for the Rent doth *ipſo facto* extinguiſh, as a Leaſe for years upon Condition to be void.

The Lord having the *Ward* of the *Meſne* enters into the Tenancy for *Mortmain*, the Seignory and Meſnalty are extinct.

If the Tenant infeoffes the Lord to the uſe of *A.* or if the Lord infeoffs the Tenant of the Mannor to the uſe of *A.* if the Seignory be extinct? *Note the caſe.*

Vide *Condition*, *Releaſe*, *Eſtovers*, *Arrerages.*

Feoffment.

TEnant for life, and he in the Reverſion join in a Feoffment of all their Land and Tenements lying in the Town where the Land lies that is in Leaſe, and make a Letter of Atturny to make Livery, this is a Grant of the Eſtate for life, and alſo of the Rever-

Reverſion. But if they had made a Feoffment of the Land of the Leſſee only, then it will be the Feofment of Tenant for life, and the Confirmation of him in Remainder.

If a man makes a Feoffment to a Stranger and to his own Wife, and makes Livery to the Stranger in the name of both, it will be good to the Stranger, and void as to the Wife.

Tenant for life infeoffs the Wife of him in Reverſion, with a Letter of Atturny to the Leſſor to deliver ſeiſin, who does it. *Quære* if he be ſeiſed in his own or his Wives Right? For he is remitted by the Forfeiture. If Tenant in tail infeoffs the Wife of the Donor, that is a Diſcontinuance.

A Feoffment is made by one Deed in Fee, and by another in tail to the ſame perſon, and Livery made according to both Deeds, it ſhall inure by Moities; For otherwiſe the Livery cannot inure upon each deed: For if he ſhould have all the Land in tail, the Remainder in Fee, then the Livery ſhall have only operation upon the Eſtate tail, and the other ſhall be but a Confirmation, and then it ſhall not inure upon both the Deeds, but upon one. And if Livery had been made only upon the Deed in tail after

the delivery of both deeds there ſhould be Tenant in tail, the remainder in fee.

If one Jointenant enfeoffs his Companion and a ſtranger, the ſtranger takes all. If Tenant in tail enfeoffs the donor, he doth not give him the Fee.

Vide *Extinguiſhment.*

Fem Covert.

A Man conveyes Land to a *Fem ſole* upon Condition, that ſhe payes a ſum of money by a day, ſhe marries, and the money is not paid, whereby her Eſtate is defeated, this will binde her after her Husbands death. But if the *Fem* be Tenant for life, and the Husband makes a Feofment, and the Leſſor enters, yet the Wife ſhall have the land after the death of her Huſband; for it is but a Condition in Law: but if the Condition be by Statute, as in a *Ceſſavit*, or *Waſt*, where there is a Recovery, there it will bind her after the death of her Husband. But if the Condition be given by Statute and no Recovery, as in *Mortmain*, then the Wife ſhall not be bound. Some Conditions in Law ſhall bind the Wife if the Husband breaks them, as

a Condition annext to the Grant of a *Parke*, *an Office*, or *a Liberty*.

If a *Fem Covert* delivers an Obligation bearing date two years after, and at the end of the two years her Husband is dead, ſhe ſhall not be Eſtopt to ſhew that the Delivery was before the Date.

Fem Sole.

IF a *Fem ſole* Tenant in a *Præcipe* marries, pending the Writ, all the reſt of the pleadings and proceſs ſhall be againſt the Wife only.

If a *Fem ſole* at *Mich:* makes a Writing dated at *Chriſtmas*, and before *Chriſtmas* ſhe marries and the Husband dies, ſhe may ſay that at the time of the date ſhe was a *Fem Covert*, and he ſhall not aver the delivery before.

Fine.

TEnant in tail levies a fine, and takes back an Eſtate in Fee upon Condition, and dies, the Heir enters, and is remitted, the Proclamations paſſe; if that ſhall take away the Remitter, and if the Condition remain?

If the Wife levy a fine as a *Fem ſole*, and the Husband enters, all the Inheritance is revoked.

Forfeiture.

LEssee for years is received by the Statute of *Glocester*, a Stranger recovers againſt him in a *Præcipe*, and confirms the Eſtate of the Leſſee for life, the Leſſor avoids the Recovery by *Error*, and Enters upon the Leſſee, ſome think he cannot.

A. makes a Leaſe for life and dies, leaving his Wife *enſeint* with a Son, the Tenant makes a Feoffment, the Son is born, if he ſhall enter for the Forfeiture. *Quære?*

A Leaſe is made upon Condition, that if the Leſſee commits Waſt, that his Eſtate ſhall ceaſe, if a Stranger commits waſt it is no Forfeiture of his Leaſe.

If Tenant for life infeoffs the Wife of the Leſſor with a Letter of Atturney to the Leſſor to deliver ſeiſin, which is done accordingly. *Quære*, if this be a Forfeiture? ſome think it is.

A Leaſe is made to *E.* and *F.* for their lives, *F.* grants to a ſtranger for the life of *E.* that is a Forfeiture of his Eſtate; for he had not an Eſtate for the life of *E.* but in reſpect of the Jointure, and an Eſtate for the life of *E.* doth not paſſe from the Leſſor in the Moiry, but upon Condition in Law,

Law, that the Jointure remains, and now he hath given it for the Life of *E.* abſolutely: But if both of them had made a Leaſe for the life of *E.* that had not been a Forfeiture, *Cauſa patet.*

If a Leaſe for life be made upon Condition, that the Leſſee ſhall infeoffe *A.* which is done, the Leſſor may enter for breach of the Condition in Law, *ſcilicet* the Forfeiture.

Tenant for life grants over his Eſtate upon Condition after Title of Entry, the Grantee makes a Feoffment, the Leſſor enters for the Forfeiture, ſome think the Leſſor may enter upon him for the Title of Entry; for the Forfeiture is by the Common Law, which ſhall not deſtroy another Title comming in reſpect of the Eſtate.

Land is given to a man and a *Feme ſole*, and to the Woman in ſpeciall tail, they marry and have Iſſue, the Husband aliens a moity and dies, the Iſſue dies without Iſſue, if the Wife may enter into the Moity for the Forfeiture? For now ſhe is Tenant in tayl *after poſſibility*, in which caſe ſhe hath but a Freehold in the remainder, otherwiſe if her Eſtate had been in tail.

Land

Land is deviſed to A. for life, the Remainder to him that ſhall be his firſt Son, the Remainder in Fee, *A.* aliens in Fee, if he in the Remainder may Enter for the Forfeiture. *Quære?*

Frankmarriage.

THree Jointenants, one of them gives his part with his Daughter in Frankmarriage to one of his Companions, and by the ſame Deed releaſeth to them in Frankmarriage, and makes Livery, ſome think that is a good gift in Frankmarriage for this reaſon, that although one Jointenant cannot infeoffe his Companion, yet his Companion and another he may, and the Livery made to the other ſhall veſt the Land in both, and that is for the advantage of the third, as in *Gaſcoignes caſe*, 7 *H.* 6. 3. It was not a ſurrender for the advantage of the third. Nor in 27 *H.* 7. 41. for the advantage of the Husband, ſo it ſhall not be void here for the advantage of the third perſon. But others think the contrary, becauſe the Husband cannot take it immediately from his Companion, and for him it is void, and good for his Wife. As if a man makes a Feoffment

to

to a ſtranger & his own wife, if livery be made to the ſtranger it will operate but to the benefit of the ſtranger, and will be void for the Wife. So here it is good for the wife, & the Releaſe is good for the Husband. Further, if one Jointenant cannot infeoffe his Companion, as it is holden in 10 *E.* 4. then it will inure ſeverally, *viz.* to his Companion as a Releaſe, and to his wife for life; for if it be no good Frankmarriage, then 'tis the Eſtate for life, and ſo it was reſolved between *Webb & Porter* in 24 *Eliz.* And then they take in Common, and ſeverally and no Frankmarriage.

Grant.

TEnant in tail holds by a Rent, the Donor grants the ſervices, nothing paſſeth; for the Rent cannot paſſe but as a Rent ſervice. Lord and Tenant by Rent and Fealty, the Lord grants the ſervices of the Tenant ſaving the fealty. Nothing paſſes by that Grant; for the Rent cannot paſs but as a Rent ſervice; for a Rent Charge, or Rent Seck will not paſs by thoſe words.

The ſame words cannot be a Grant and a Confirmation too. If a Diſſeiſor grants

grants a Rent Charge to the Diſſeiſee and he grants it over, and after reenters, he ſhall hold it diſcharged, *Cauſa qua ſupra.*

If the Lord marries the Tenant, or by any means hath as high an Eſtate in the Tenancy as he hath in the Seignory, he cannot grant the Seignory over. If the Tenant be in Ward, or diſclaims, the Lord may grant over the Seignory. But if the Tenant be Tenant for life of the Seignory, and the Seignory is granted to him in Fee, he cannot grant it over; for he never had poſſeſſion of it. But if he had poſſeſſion, and it is ſuſpended by taking an Eſtate for life, yet he may grant it over.

If the Parſon and Ordinary grant a Rent Charge to the Patron, the Succeſſor ſhall avoid it; for the Aſſent of the Patron ought to be expreſſe, where the Succeſſor ſhall be bound. But if they had all granted it to *A.* who had granted it to the Patron, that had been good.

If a Rent be granted for life, and by another Deed it is granted, that it ſhall be lawfull for the Grantee and his Heirs to diſtrain for the ſame Rent, it muſt be a Rent of the ſame value; for the Rent determins by his death.

So

So if the King grants to the Mayor and Commonalty of *D.* the ſame Liberties which the Mayor, &c. of *L.* hath. It ſhall be intended ſuch Liberties.

A. makes a Leaſe for life, reſerving the firſt four years a Roſe, and after a yearly Rent of twenty ſhillings, the Leſſor grants the twenty ſhillings to commence after the end of the four years, the Grant is void; for it is all but one Rent, and then if the Grant ſhould be good the Grantor ſhould have a term in the Roſe for four years, whereas before it was a Freehold; and then it is no more but that a man hath a Rent in Fee, and grants it after four years, that Grant is void, otherwiſe of a Rent created *de Novo.* 8 *H.* 7. 3.

A. ſeiſed of a Rent in Fee grants it to one for twenty years from the time of the Atturnment of the Tenant, and dies, the Tenant Atturns, if this be a good Grant. *Quære?*

Gavel kind.

A Lord in Gavel kind hath two Sons, the Tenant aliens in *Mortmain*, the Lord dies, the eldeſt Son enters into both parts, the Seignory ſhall

shall descend as the Tenancy. But now the Land (admitting a Licence had been obtained) being aliened in *Mortmain*, the Custom is extinct.

A. seised of Gavel kind Land is impleaded, and vouches, the Vouchee enters into Warranty, the Tenant dies, having two Sons, if the Eldest alone shall sue Execution. *Quære?*

Habendum.

A Rent is granted to two *Habendum*, to the one until he be married, and to the other until he is advanced to ten pounds *per annum*. *Quære*, if they be Tenants in Common or Jointenants, and when one performs the Condition, if the other shall have all? So if a Rent is granted to two *Habendum*, to the one for his life, and to the other for his life, if they be Tenants in Common?

Vide Baron & Fem.

Harriot.

A *Fem* Lessee for life by the Custome of a Mannor marries by license; the Husband dies, the Lord shall not have a *Harriot*, for there is no change of his Tenant. So if Land be let to Hus-

Husband and Wife for their lives, and the Husband dies, the Lord ſhall not have *Harriot* for the ſame reaſon. If a *Fem* leſſee for life marries, and ſhe dies, the Lord ſhall not have a *Harriot*, for ſhe had no Chattles? And the Cuſtome may be reaſonable, if in ſuch caſe the Husband dies where the Wife is ſeiſed, that he ſhall pay a *Harriot*, for if the Wife dies, there is none due. If the Tenant deviſes all his Goods, yet the Lord ſhall have his Harriot, for the deviſe takes effect after the death. If a man hath two Horſes at the time of his death, one is a young one, and the other worth forty ſhillings, and the Lord doth not ſeiſe until two years after the death of the Tenant, and the youngeſt becomes worth five pounds, the Lord ſhall not have him; for he had a property preſently by the death of the Tenant in the other. A Cow hath three Calves before the ſeiſure of the Lord, the Lord may ſeiſe them with the Cow. *Quære.*

Husband and Wife and the Son purchaſe to them and to the Heirs of the body of the Son begotten, the Husband dies, the Lord ſhall not have a Harriot. 24 E. 3. Husband and Wife purchaſe land, to them and to the Heirs of the Husband, who dies, the Lord ſhall not have a Harriot.

Heir.

A Rent is granted to commence after the death of the Grantee the Heir ſhall take it by Deſcent.

A. makes a Feoffment upon Condition, and if it be broke, that it ſhall be lawfull for him to reenter during his life, he ſhall enter by expreſſe Reſervation, and after his death his Heir ſhall enter by the proviſion of the Law.

If an Encroachment of Services be made upon the Husband, if the Wife be endowed ſhe ſhall not be contributory, but the Heir cannot avoid it.

A Seignory is granted for years, the Rent being behind, the Tenant dies, the years expire, if the Grantee ſhall have Debt againſt the Heir of the Tenant for the Rent due before and after the death of the Tenant? Some ſay the Heir ſhall not be charged, unleſs the Tenant had bound himſelf and his Heirs by expreſs words, and it ſhall not be eſteemed the proper debt of the Heir.

If *A.* hath a Daughter, who hath a Son, a Remainder is limited to the right Heirs females of the body of *A.* the Son ſhall take the Remainder, for he is a purchaſer; but he ſhall not have

have the land by descent which was given to *A.* and the Heirs females of his body, 20 *H.* 6. 43. *p. Newton.*

Lessee for life the remainder to the right Heirs of *A.* who hath a Son, who dies without issue, the land shall descend to the Heirs on the part of the Father, for the Son takes by purchase, and as Heir to *A.* so that the Heir of *A.* must take it. If land be given to a man and to his Heirs on the part of his Mother begotten, and his Mother is dead, and he dies without issue, the Heir on the part of his Father shall take. *Quære?*

If a man makes a Gift in tail of Land on the part of his Mother, reserving a Rent, and dies without Issue, the Heir on the part of the Mother shall have the Rent as incident to the Reversion.

If a man binds himself and his Heirs in twenty pounds and dies, and his Executors have ten pounds onely, an Action of Debt lies against the Heir for all; for if the Creditor makes choice of the Executor he cannot have any remedy against the Heir for the rest. If the Obligor makes the Obligee his Executor, and leaves ten pound and the Debt was twenty, he may detain that and bring an Action

of Debt againſt the Heir for the reſt; for it is apportioned by the Act in Law.

If Land be given to one, and the Heirs males of his body, the Remainder to the Heirs Females of his body, the Daughter of the Son ſhall not have the Land. If Land be given to one, and the Heirs males of his body, and to the Heirs females of his body, if he hath Iſſue male and female, they ſhall take by Moities by deſcent ſeverally. If a Woman hath three Sons by ſeverall Husbands, and Land is given to her and to the Heirs of her body by the firſt and ſecond Husband begotten, the two Sons ſhall take ſeverally by Moities, and yet the Mother had an Eſtate.

A. having two Daughters, one is attainted of Felony, a Remainder is limited to the Heirs of *A.* the other ſhall take nothing. If a Remainder be limited to the Heirs of *B.* who hath a Son who is attainted, the Remainder is void, and the Fee reſts in Leſſor.

Land is given to *A.* for life, the Remainder to *B.* for life, the Remainder to the Heirs of *A.* who dies, *B.* enters and dies, a Stranger abates, the Heir of *A.* ſhall have a Writ of Right upon the poſſeſſion of *A.* and if Land be given to *C.* and *D.* and to

the

the Heirs of *C.* who dies, and a Recovery is had againſt *D.* and he dies, the Heir of *C.* ſhall have a Writ of Right of all the Land.

A. binds himſelf and his Heirs in twenty pounds, and dies, the Executors have Aſſetts, the Obligee releaſeth to the Heir all Actions of Debt, the Executors pay the Aſſetts to other Creditors, The Obligee may have an Action of Debt againſt the Heir; for at the time of the Releaſe he was not intitled to have an Action againſt him. but if the Executors or the Heir had no Aſſetts at the time of the Releaſe, and after the Heir recovers Aſſetts, the Releaſe will bar him.

If *A.* makes a Feoffment of Land which he hath on the part of his Mother, to the uſe of himſelf and his Heirs, it ſhall be to the uſe of the Heirs on the part of his Father, if he dies without Iſſue.

A *Femſole* hath a Rent Seck, and marries, the Tenant of the Land grants to the Husband and his Heirs to diſtrain for the Rent, the Husband and Wife die without Iſſue, the diſtreſs is extinct; for the Heirs of the Husband are onely privy to diſtrain.

A Condition does deſcend upon the Heir at Common Law.

Incertainty.

IF one infeoffs another of twenty Acres, *viz.* of one to the uſe of *A.* and does not ſhew of which Acre, *A.* takes nothing by the Feoffment; for the poſſeſſion cannot be executed; for it was not certain which are paſſed to *A.* and *A.* cannot have Election, for he is not privy.

If a Reverſion be granted to one, and after to another, and the Tenant atturns to both, neither of them ſhall take for the incertainty.

If Land be given to a Man and a Woman upon Condition, that which of them firſt marries ſhall have in Fee, and they intermarry, neither of them ſhall have Fee. If the Reverſion be granted of black Acre, or of white Acre, if Atturnment be good. *Quere* for the incertainty.

A. gives two Acres to *B. Habend.* the one for life, the other in Fee without Deed, rendring a Robe or a Rent, and doth not ſhew which he ſhall have for life.

A. lets two Acres, rendring a Rent on Condition, to be performed by the Leſſee, that he ſhall have Fee in one Acre,

Acre, not ſhewing which, and makes Livery of both. *Quære.*

Infant.

IF an Infant infeoffs two, and at his full age releaſeth to one, it inures to both.

If an Infant be forejudged he is bound for ever, but if he makes a Feoffment of a Mannor, and the Feoffee is forejudged, yet the Infant may enter into the Mannor, and diſtrain for the Meſnalty, the reaſon is, becauſe in the firſt caſe he was party to the Record, and in the laſt caſe the Forejudger was againſt the Feoffee, who had a defeaſible Title. A Recovery in Waſt againſt an Infant will bind him, but ſo it will not againſt his Grantee; for he had a Title to defeat his Eſtate, ſo in a *Ceſſavit*.

Conditions and Forfeitures that will bind a *Fem Covert* will bind an Infant.

If an Infant makes Livery within view he ſhall not have an *Aſſize* if the Feoffee enters; for it is more than a Livery in Law.

If an Infant Diſſeiſor makes a Feoffment, and a Diſſent is caſt, and the Diſſeiſee releaſeth to the Heir, yet

the Infant ſhall have a *Dum fuit infra ætatem*; for he demands the poſſeſſion to which he had more right than the Diſſeiſee had. As if the Heir, who is in by Deſcent brings an *Aſſize* againſt his Diſſeiſor, it is no plea for him to plead the Releaſe of the Diſſeiſee, *Cauſa qua ſupra.*

If a Reverſion be granted to an Infant, and the Tenant atturns at his full age, yet he may diſagree; for the Grant which was the principal was in his minority.

If an Infant makes a Leaſe to commence *in futuro*, and after makes a Feoffment, being either at full age, or under age, the Feoffee ſhall not avoid the Leaſe.

If an Infant delivers a Deed bearing date two years after, and at the end of the two years he is of full age, he ſhall not be Eſtopped to ſhew the delivery before the date.

If a *Fem* Tenant in tail marries an Infant, who aliens and dies, the wife cannot enter upon the Feoffee; for ſhe is not privy in blood to the Infant, and privy in Eſtate onely will not do. As if there be two Jointenants, and one is a *Minor*, and they are diſſeiſed, and a Diſſent caſt, the Infant dies, the Survivor cannot enter as the Infant might.

might. Neither ſhall a Lord by Eſcheat or Donor take advantage of Infancy. If Land be given to an Infant and his Heirs Females, and he hath a Son and a Daughter, and aliens and dies, his Daughter cannot enter; for ſhe is but a ſpeciall Heir, *Quoad hoc.* In the principall caſe if the Wife had been Tenant in Fee ſimple, the Heir of the Infant ſhall not enter upon his alienation, as *Litt.* ſays; for the Wife had the Right, and a Title of Entry which was in Right cannot deſcend to the Heir of the Husband: but in this caſe, being the Husband hath given a Fee ſimple, and had but an Eſtate in tail, in Right of his Wife, ſo that more is given than he had in Right of his wife, makes this caſe more doubtfull than *Litts.* but yet it ſeems the Heir may not enter; for he cannot have the ſame Eſtate which his Anceſtor had, and the Right of the Eſtate tail ſurvives to the Wife; for if Land be given to an Infant in tail, who aliens and dies without Iſſue, his collateral Heir cannot enter; for the Eſtate is determined which the Infant had at the time of the Gift; for if an Infant be Tenant *Par auter vye*, and aliens, and *Ceſty que vye* dies, the Infant himſelf cannot enter, 5 *E.* 4. 5. But in

the principall caſe, if the Infant had made a Gift in tail his Iſſue might have entred by reaſon of the Reverſion, but otherwiſe where no Eſtate deſcends to the Heir. If Tenant in tail to him and his Heirs Females aliens and dies, leaving Iſſue a Son and a Daughter, the Son ſhall not enter, no more ſhall the Daughter, ſo of the youngeſt Son in *Borough Engliſh.* If Tenant in tail infeoffs within age, and after is attainted of Felony, his Iſſue ſhall not enter, for he is Diſabled in blood.

If an Infant be diſſeiſed, and a deſcent caſt during non-age, and after he comes of full age, the Heir of the Diſſeiſor dies before his Entry; the Infant may enter, for the Heir was never poſſeſt; for he had but a poſſeſſion in Law.

Joinder in Action.

IF two Parceners dye before Partition, and a ſtranger abates, the Iſſues ſhall not join in a *Mortdanceſter*, for the *Stat.* of *Glouceſter ca.* 17. is only when one Right deſcends to divers, but every iſſue claims her right from and by her Mother, ſo that ſeverall Rights deſcended to them, and ſo out of the *Stat.* and is as it was at the common

common Law, and therefore if Parceners are diſſeiſed, their iſſues ſhall not join in a Writ of Entry, but ſhall have ſeverall Writs in reſpect of their ſeverall Rights, as they ſhall have ſeverall *Formedons*. If one hath cauſe to have a Writ of *Ayel*, another of *Beſayel*, they ſhall not join; for they have cauſe to have ſeverall Writts; But where one is intitled to have a Writ of *Mortdanceſter*, and another *Ayel*, or *Beſayel*, there they ſhall join. But if none of them may have an *Aſſize*, then there is no Remedy by the Statute, 2 *E.* 3. 34. 48 *E.* 3. 14. 24 *E.* 3. 13.

If I recover in an *Aſſize*, and after I am diſſeiſed by the ſame perſon and another, I ſhall not have a Rediſſeiſin; for it muſt be againſt the ſame perſon. If two Parceners make partition upon Record of an Advowſon, the Eldeſt preſents firſt, and after the youngeſt, and the Eldeſt and a Stranger preſent in the turn of the youngeſt, the youngeſt ſhall not have a *Scire facias* againſt them; for the *Stat.* of *Weſtm.* 2. does give it againſt thoſe that were parties to the Record, but ſhe may have it againſt her Siſter: But in the firſt caſe a *Rediſſeiſin* doth not lie againſt the *Rediſſeiſor*; for he may plead Jointenancy, but in the laſt caſe it is no

plea

plea that another presented with her; for she may have a *Quare Impedit* against both, or several Actions, as a man may in Trespasse made by two. So if the Lord distrain his Tenant, and he sues a *Replevin*, and after the Lord distrains the beast of a stranger and another beast of his Tenant, the Tenant shall have a *Recaption*. But if the Lord had distrained again the beasts which his Tenant and the stranger had in common, there he could not, because for the last distress they ought to joyn, and the stranger cannot join in the *Recaption*.

If a stranger makes a *Rescous* to the Lord, the Lord shall not have an *Assize* against him alone without the Tenant, because he cannot be said Tenant of the Rent, but against the *Pernor* he may have an *Assize* only. And if there be Lord, Mesne, and Tenant, and the Tenant makes Rescous to the Lord, an *Assize* is not maintainable only against the Tenant. And if there be Lord, two jointenants, Mesnes, and Tenant, and one of the *Mesnes*, and the Tenant makes *Rescous*, the Lord shall not have an *Assize* against one only, but he ought to name both the *Mesnes*.

Two

Two *Feme* Jointenants in Fee have Husbands, who make ſeverall Feofments of their Moities, and die, the Wives ſhall not join in one Writ of Right; for their Right was diſcontinued at ſeveral times. So if one Jointenant diſſeiſeth the other and makes a Feofment within Age, and dies; or if two Infants Jointenants make ſeveral Feofments, and one dies, the other hath no Remedy for the Moity; but otherwiſe if wrong had been made to them at one time, though ſeverall wayes.

If there be iſſue of two Parceners, one dies, and the other endows the Wife, one Action ſhall be maintained againſt both, *v.* 9 *E.* 4. 14. againſt Tenant by the Curteſie, and the other Parcener, 21 *E.* 3. A *Scire facias* brought againſt Tenant by the Curteſie, and the other Parcener, and good.

Land is given to four, *Habendum*, one Moity to the firſt two, the other Moity to the other two, the firſt two are Jointenants with themſelves, and Tenants in common with the laſt two, and ſo *è converſo*, they are Jointenants of a Moity, and Tenants in common of the whole, and two *Præcipes* ſhall be ſued againſt the four, and by the four, but

but for the two joint *Præcipes*, for and againſt them.

Jointenants.

TWo Jointenants in Fee, one a *Minor* makes a Leaſe for life, he of full age dies, the other recovers a Moity in a *Dum fuit infra*, &c. Tenant for life dies, the Heir of the other Jointenant enters, the Infant outs him, he brings an Aſſize, ſome think it is maintainable. For when he brought a *Dum fuit infra*, &c. and recovered a Moity, now he defeats the Leaſe for his moity, and makes it, as if the other had made the Leaſe for life only, which makes a ſeverance of the Jointure.

Two Jointenants by twelve pence, one grants all that belongs to him upon Condition, the Lord grants the Seignory of one with Atturnment, the Feoffor Enters for breach of the Condition, he ſhall hold by twelve pence, and the other by twelve pence alſo; for there is no Apporcionment.

Though one Jointenant cannot infeoffe his Companion, yet his Companion and another he may, and the Livery

Livery made to the other ſhall veſt the Eſtate in both.

If a Reverſion be granted to Tenant for life, and a ſtranger, the Jointure of the Fee is ſevered; for Tenant for life hath a Fee in the moity Executed. If the Reverſion be granted to Tenant in tail and a Stranger, the Fee remaines in Jointure. And if the Husband be Tenant for life, and the Reverſion is granted to him and his Wife, the Jointure remains; for there is no Moities between them. If a Leaſe be made to two, *Habendum*, one Moity to one, the other to the other for life, and after a Confirmation is made to them and their Heirs, the Joynture of the Fee is ſevered; for the Confirmation inures according to the Nature of the Eſtate. But if the Reverſion had been granted to them in Fee they had been Joyntenants; for the particular Eſtate had been drowned. If there be two Tenants in Common for life, and the Reverſion is granted to two Jointly, and one Purchaſeth the Eſtate of one Tenant for life, and the other, of the other: The Joynture is ſevered; For the Purchaſe being at ſeverall times, pre-

preſently upon each purchaſe the fee was executed. If a Seignory be granted in fee to two, one takes an Eſtate of the Tenancy *pur auter vye, ceſty que vye* dies. The Jointure remains, becauſe they were Jointenants at the beginning.

Two Jointenants for life, and one is bound in a Statute, and then grants his Eſtate, yet it is liable to execution, during his life, , but 'tis otherwiſe of an Eſtate for years, for in the one the Land is bound by the Statute, in the other not.

If a Recovery be had againſt one Jointenant, his Companion ſhall not avoid it, for the Right was bound, but it is otherwiſe of Charges, for the poſſeſſion is only chargeable. If one Jointenant in Fee takes a Leaſe by Indenture of his Moity from a ſtranger, the Survivor ſhall avoid it.

Land is given to two and the Heirs of their bodies, the remainder to their right Heirs, they are not Jointenants of the Fee.

If one Jointenant makes a Leaſe for five years, on Condition that the Leſſee doth ſuch an Act by a day, he ſhall have for twenty years, and he dies before the day, the Condition is void as to the Survivor.

If

If there be two Jointenants for life, one makes a Leaſe for years and dies, the Survivor ſhall not avoid it; for the ſame Eſtate which he had continues now, and there is no difference if they had a Feeſimple, ſome think the contrary; for the Survivor hath not the Freehold of his Companion, as he hath the Fee where they are Jointenants in Feeſimple; for his Eſtate determins by his death. But all agree that if *A.* and *B.* be Jointenants for the life of *C.* and *A.* makes a Leaſe for life and dies, *B.* ſhall not avoid it; for the Eſtate which he had continues.

Two Jointenants in Fee are diſſeiſed by the Father of one, who dies, and the ſon enters, he is remitted to all the land, & his Companion ſhall enter with him. And it is not like the caſe where two are diſſeiſed, and a Diſſent caſt during the Nonage of one, and he enters, and is remitted for a Moity, his Companion ſhall not enter, becauſe that this priviledge is given him in reſpect of his perſon more than in reſpect of the Land. Neither is it like the caſe where Tenant in tail enfeoffs one Daughter, and ſhe dies, ſhe being within age, ſhe is remitted, and yet her Companion ſhall not have Advantage of

of it, becauſe the Right was not in them before.

If a *Fem* Jointenant for years takes Husband, and ſhe dies, the Survivor ſhall have all.

Two Jointenants of two Acres, the Land is confirmed to them in Fee, of one Acre to the uſe of one, and of the other to the uſe of the other, they are ſeverall Tenants of the Freehold of the Acres; for the Freehold is drownd to the Confirmation to the uſe.

Tenant for life makes a Leaſe for life, the remainder to his Leſſor and a Stranger, they are not Jointenants, but the Stranger ſhall take all; for he could not give a Fee to him that had it before. As if Tenant in tail infeoffs the Donor, or if one Jointenant his Companion and a Stranger, the Stranger takes all.

If two Jointenants makes a Leaſe for life, and one grants his part of the Reverſion during the life of the Leſſee, ſome think this is a ſeverance of the Jointure.

If one Jointenant makes a Leaſe for years, the Remainder to the right Heirs of *A.* if the Leſſor dies in the life of *A.* the Survivor ſhall have the Reverſion; for the Leaſe for yeares

was

was no ſeverance of the Jointure, neither could it ſupport the contingent remainder.

Judgement.

IN Debt upon a Recovery in treſpaſs, the plaintiff recovers there where the action was brought, a Writ of Error depending in *B. R.* upon treſpaſs, and after the Judgement given in debt the Judgement in treſpaſs is reverſed. *Quære* what remedy he ſhall have for the debt recovered? for it is a Recovery in the *C. B.* which he cannot reverſe in another Court, and though he might, yet the Execution of the debt being paſt, he cannot be reſtored to that by the Reverſall in the firſt Writ of Error in the treſpaſs.

Leaſe.

IF a Leaſe be made for years, and after the Leſſor makes another Leaſe for life to commence after the end of the term, the ſecond Leaſe is void although there be Atturnment; for a Freehold cannot paſſe out of any perſon that hath a greater Eſtate, reſer-

ving an Eſtate until the Freehold commences: but if the Leaſe had been but for years it had been otherwiſe, and in the mean time the Leſſee ſhall have the Rent reſerved upon the firſt Leaſe, for a Leaſe for years is nothing but a Contract. If a Leaſe be made for ten years to commence at Michaelmas, and after he makes a Leaſe for twenty years to commence at Eaſter, the ſecond Leaſe is good for ten yeares, though the firſt Leſſee ſurrenders before; for it was void for ten years at the firſt: by the ſame reaſon if one makes a Leaſe for life, and after makes a Leaſe for years to commence preſently, the ſecond Leaſe is void although the firſt Leſſee dies within a year after.

If Leſſee *pur auter vye* makes a Leaſe for twenty years by Indenture, and after purchaſeth the Reverſion in Fee, and *Ceſty que vye* dies, the Leſſor may enter upon the Leſſee although the years continue; for he hath a new Eſtate and may confeſſe the Concluſion, and avoid it. But if *A.* lets Lands in which he hath nothing, and after purchaſeth the Land, the Leſſee may Eſtop him although he had not any Eſtate at the time of the Leaſe, ſo he cannot confeſſe the Leaſe and avoid it,

it, as he may in the other caſe; for in this caſe the Leaſe took effect by way of Eſtopple, but in the other caſe there was an Intereſt conveyed at firſt.

If the Patron grants the next avoidance, and after he, the Ordinary and Incumbent make a Leaſe of the Rectory for twenty years, the Incumbent of the firſt Grantee ſhall avoid the Leaſe, but if he dies during the Leaſe, the Leſſee ſhall enjoy it during the reſt of the years againſt the Succeſſor. And if Land be given to Husband and Wife, and to the Heirs of the Husband, he makes a Leaſe for years and dies, after the death of the Wife the Leſſee ſhall enjoy the Reſidue of the years againſt the Heir of the Husband; for the Leaſe did once take effect. But where a Leaſe for life is made, and a Leaſe for years to begin preſently, that was void at the beginning againſt all perſons, and therefore can never take effect. If the Donor diſſeiſeth the Tenant in tail and makes a Leaſe for years, and the Tenant in tail dies without Iſſue, the Leſſee ſhall have the Reſidue of the term againſt the Donor; but if Tenant in tail makes a Leaſe for years, and the Donor confirms, and the Iſſue

outs the Termor and dies without Iſſue, the Leſſee ſhall not enjoy his term; for in the one caſe he claims from the Donor, and in the other from the Donee.

If a Leaſe be made to *A.* for life, and twenty years over, he ſhall have the years although livery be not made of the Land.

If a leaſe be made for the lives of *A.* and *B.* and *A.* dies, the leaſe ſhall continue for the life of *B.* But if two make a leaſe for ſixty years, if they two ſhall ſo long live, if either of them die the Eſtate is determined; for that was not a limitation but a Condition. But if a leaſe be made during the time that *A.* and *B.* ſhall inhabit within *London*, and one of them dwells in another place, the leaſe is determined, for it is a collaterall determination.

If I licence one to occupy my land until the Corn that is growing upon him is ripe, that is a good leaſe.

Leſſee for twenty years makes a leaſe for ten years, and then makes a leaſe to the ſame leſſee for ten years to commence after the determination of the firſt ten years, the laſt ten years are not out of the firſt leſſee, and therefore the ſecond leſſee ſhall have the Rent which was reſerved by

the

the firſt leſſor during the firſt ten years. *Quere.*

A. makes a leaſe for twenty years, and then makes another leaſe for forty years to *C.* to commence after the expiration of the firſt leaſe, and then he makes a leaſe to the firſt leſſee for thirty years, the leaſe of *C.* ſhall not begin preſently; for nothing extinguiſhes and avoids the leaſe but the taking the ſecond leaſe. And then the leaſe to *C.* is an impediment that the ſecond leaſe cannot commence, and therefore the firſt leaſe is not determined.

Tenant in tail marries, and makes a leaſe for years, the Wife endowed ſhall avoid the leaſe for her time, but after her deceaſe the leaſe will ſtand good againſt the Heir if the Heir accepts the Rent. If Tenant in tail makes a leaſe for years, and marries, and dies without iſſue, the Donor avoids the leaſe, and the Wife recovers her Dower, the Leſſee ſhall enjoy it againſt her.

A. makes a leaſe for forty years, *Provided*, that if *B.* dies within the term, that it ſhall be but for twenty; *A.* dies at the end of four and twenty years, the leſſor brings an Action of Waſte, for waſte done between the three and twenty and four and twenty

years: ſome think it is maintainable in the *tenuit*, for the term continues untill the death of *B.* If a Rent had been granted for forty years with ſuch a *Proviſo*, and he dies, *ut ſupra*, the Tenant of the Land may have an Action of Accompt for the Rent received after the twenty years; for now upon the matter the Grant ended at twenty years.

If a Leaſe be made of Land to me during my life, and the life of *B.* that is but an Eſtate for my own life; for the greater drowns the leſſer. If a Leaſe be made to two for forty years, if they ſhall ſo long live, and one dies, the Leaſe determins; for it is a Condition and not a Limitation. So if the Leaſe had been ſo long as *A.* and *B.* ſhall be Juſtices, &c. *A.* lets during the life of *Baron & Fem*, the Leſſee grants during the Coverture.

Limitation.

IF Land be given to one and the Heirs males of his body, the Remainder to the Heirs Females of his body, the Daughter of the Son ſhall not take by this Limitation. If Land be given, *Habendum* to him and the Heirs males of his body, and to him and the Heirs Females

Females of his body, if he ſhall take it as a Remainder? *Quere.* But *Litt.* ſaith in the laſt caſe but one, that the *Warranty* of the Father ſhal be lineal to the Daughter. If Land be given to one and the Heirs Males of his body, and the Heirs Females of his body, if he hath Iſſue Male and Female, they ſhall take by Moities ſeverally by deſcent. So if a Woman hath three Sons by ſeverall Husbands, and Land is given to the Woman and to the Heirs of her firſt and ſecond Husband, ſome think the two Sons ſhall take ſeverally by Moities, and yet it was but one Eſtate in the Woman.

A Feoffment is made to the uſe of *I.* and after to the uſe of the Feoffor and his Heirs, the Feoffor doth not take it by Remainder; for the Limitation to himſelf is void; for the Law ſaith as much, but it is in him as a Reverſion. But if the Feoffment had been to the uſe of the Feoffor for life, there the Feoffee ſhall have the Fee to his own uſe.

If a man makes a Leaſe for life to the uſe of *A.* and his Heirs, there *A.* hath a Fee determinable.

Land is given to a man and to two women Couſins of the Donor in Frankmarriage, or to a man, and to two

women, and to the Heirs of their bodies begotten, or to two men & to two women, and to the Heirs of their bodies begotten, in every of these cases each hath an Estate tail in one part, and shall be Jointenants of the Freehold, and in none of these cases there shall be a speciall tail. So Land given to three, one Moity to *Baron & Fem* in Frankmarriage, or in speciall tail, and another Moity to the same man, and another woman in speciall tail, or when it is given to a man, and to two women, or two men and two women, and the Heirs of their bodies, this is as much as to say, to the Heirs of all their bodies, so that by the words, the Heir that must inherit must be Heir of all their bodies, which is impossible: and being the words cannot be performed litterally, the Law will make the best Construction, and make them severall Estates tail in every of them, and joint Freeholds, *Quod nota.*

If Land be given to two, to the one for life, and to the other for years, they are Tenants in Common. But if a Gift be made to *Baron & Fem*, and to a third person, that is, to the third person for life, to the Husband in tail, and to the Wife for years, if the third shall

ſhall take the moity? *Quære* how the Husband and Wife ſhall take jointly, or ſeverally, or how much ſeverally?

If Tenant for life makes a Leaſe for life, the Remainder to the Leſſor and a Stranger, ſome think the Stranger ſhall take all; for he cannot give a Fee to him that had a Fee before; as if one Jointenant infeoffs his Companion and a Stranger, and if he had made a Leaſe *Pur auter vye*, the Remainder *ut ſupra*, there perhaps it would inure jointly, but the limitation of the Fee here works by wrong, and it is better for the Leſſor that the Stranger takes all; for then he may have his Action for all.

Livery & Seiſin.

IF a man makes livery of one Acre in the name of that and another, which he hath for life in tail in right of his Wife, or of his Parſonage, or Biſhoprick, all paſs. But if it be in the name of an Acre, which he hath for years, or as Guardian, or by reaſon of an Execution, it is otherwiſe.

If a man makes a Feofment to *A.* and the Mayor and Commonalty of *London*, and makes livery to one in the name of both, none takes, but him that took the livery. If

If Tenant for life enfeoffs the Wife of the lessor, and the lessor makes the livery, yet it is a Forfeiture.

If a Feofment be made of a Mannor with an Advowson appendant, if livery be not made the Advowson will not passe in grosse by the delivery of the Deed.

A Disseisee cannot make a Letter of Atturney to deliver seisin, for he hath not possession: but if he delivers the letter of Atturney as an Escrowl, to deliver seisin after his Entry, it may be good. If a man makes a lease for life, and after makes a Feofment with a letter of Atturney, &c. and after Tenant for life dies, if he may now make livery?

If a Feofment be made to *A.* and a *Fem sole*, with a letter of Atturney to deliver seisin, and before seisin they intermarry, and then seisin is delivered, they shall take by moities.

A. makes a Feofment of three Acres, and after purchaseth another Acre, and delivers seisin in that Acre in the name of the rest, if the other shall passe, *Quære?*

If two Jointenants make a Feofment with a Letter of Atturny to deliver seisin, and one makes a Feoffment and Livery in person, it is a Countermand of

of the whole Livery; for he that took the Livery hath no privity with the other as to that.

Livery made to the particular Tenant within view is not good to him in Remainder; for it can benefit none but him that took it; And if there be two particular Tenants with a Remainder over ſome, that Livery made to one will not transfer the Remainder. And if a Leaſe be made to A. and B. upon Condition, that if A. doth ſuch an Act, that he ſhall have Fee, and Livery is made to B. onely, that will not enlarge the Eſtate of *A.* for he that took the Livery hath no privity with the other as to that.

Livery cannot enlarge an Eſtate if the determination of it be certain.

Market overt.

IF my Goods are ſtollen, and I ſell them *in Market overt* for a certain ſum, the Vendor hath no Remedy for his money; for the Contract was void; for if one buyes goods in *Market overt* knowing them to be ſtollen, the property is not changed, no more is it here; for the *Vendor* knew they were ſtollen from himſelf.

If

If he which knows the Goods were ſtollen, and another buys them in *Market overt*, and the Stranger dies, he ſhall have all the Goods, and the property was not altered at the firſt, but for a Moity.

If Goods be ſtolen and are ſold in a *Market overt*, and after he that ſold them buys them again, yet the firſt Owner cannot take them; for the property was altered by the firſt ſale.

Nuſance.

IF one hath a Mill or Houſe which falls down, and in the mean time a Nuſance is levied, and then it is rebuilt, he ſhall not have an *Aſſize* of Nuſance, nor abate it; for it was not made to the Nuſance of his Frank Tenement; for it was not then in being, but the Nuſance is elder than the Freehold. Some think all is one, if the Nuſance had been levied in the time of the old houſe.

Obligation.

IF *A*, hath two Daughters, and binds himſelf and his Heirs in an Obligation

tion to the Eldeſt, and dies ſeiſed of Lands, and leaves Aſſetts to his Executors, the Obligation is diſcharged; for it cannot be apporcioned.

If two are bound jointly, and one delivers the Deed at one time, and the other at another, yet it is a good joint Obligation.

If an Obligation be made to a *Fem ſole* and another, and the *Fem* marries and dies, the other ſhall have the whole duty; for a *Choſe in action* does ſurvive.

Occupant.

A Leaſe is made to one for the lives of *A.* and *B.* the Leſſee makes a Leaſe for the life of *A.* only, if the ſecond Leſſee dies, living *A.* the Occupant ſhall have it.

If Land be given to two, to one for the life of *A.* and to the other for the life of B. if one dies, the other ſhall make himſelf a Title againſt an Occupant.

If a Leaſe be made upon Condition, that if the Rent be behind, the Leſſor ſhall enter and retain, and the Leſſor enters and dies, his Heir ſhall have it againſt an Oocupant.

If

If I am Leſſee for the life of *C.* and I grant my Eſtate to *D.* upon Condition, that if *D.* dies, living *C.* that it ſhall be lawfull for me to re-enter. *Quære*, if this Condition be ſufficient for me to enter upon an Occupant?

If a man commits Felony, and the Lord grants his Seignory, and after the man makes a Feofment upon Condition, and is Attainted, and obtains his pardon, and after Re-enters for breach of the Condition and dies, if the Occupant ſhall have the Land, or the Lord, or the Iſſue, is the Queſtion?

A. makes a Feoffment to B. *Habendum* to him ſo long as *Pauls* Steeple ſhall ſtand, B. dies without Heir. *Quære* if the Lord may enter by Eſcheat, or an Occupant ſhall have it?

FH MVSEVM BRITANNICVM

Outlawrie.

IF a man grants to another one of his Horſes, until the Grantee hath made Election there is no property veſted in him, neither ſhall he forfeit it by Outlawry.

Parceners

Parceners & Partition.

A. ſeiſed of two Acres hath a Son and a Daughter by one *venter*, and a Son by another, grants a Rent out of one Acre to the Son, who dies, the Father dies, the Daughters make Partition, the Land charged is allotted to the youngeſt, ſhe ſhall hold it charged with all to the Eldeſt, 34 *Aſſ. p.* 15.

A. hath Iſſue two Daughters, and holds Land of the Eldeſt by Suite and an Hawke, and dies, the Daughters aſſign a third part to the Mother in Dower, and then makes Partition, Tenant in Dower ſhall not be contributory for any part of the Services; for the Reverſion remains in Parcenary between them two: for they cannot make Partition thereof, and then the whole Seignory is in ſuſpence, and alſo the youngeſt Daughter ſhall be diſcharged of the Tenure; and yet if Land holden by an Hauke diſcend upon the Seignoreſſe and her Siſter, and they make Partition, the Seignoreſſe ſhall have the Hauk, but there no ſuite; for by the *Stat. of Marlbridge ca.* 9. the Eldeſt ought to do it, and the

the youngeſt is to be contributory, but ſhe being Seignoreſſe cannot do it to her ſelf, *ergo*, &c. But the Reaſon in the principall caſe why the youngeſt ſhall be diſcharged, is, becauſe the Seignory is in ſuſpence for parcel, and it cannot be in *eſſe* for the reſt: But if a Tenant hath two Daughters, and the Lord ſeiſes the youngeſt within age, he ſhall diſtrain the other for the Moity of the Seignory and the Act of Law ſhall not prejudice him. *Quære*, for the Seiſure is his own Act.

If one Siſter be Seignoreſs, to whom the Tenancy is deſcended, ſhe ſhall not have the Rent nor other Charge before Partition, but if ſhe had the tythes ſhe ſhould have had them after ſeverance from the nine years before Partition; for they lye in *Prendre*, and ſhe takes them as Parſon.

Before Partition one Parcener makes a Leaſe of an Acre to *I. S.* for twenty years, and they after make Partition, ſo that that Acre is allotted to her, it ſeems ſhe ſhall out the Leſſee; for the Partition hath relation from the death of the Anceſtor, and yet at this time ſhe had full power to make a Leaſe of the Moity of it. So it ſeems ſhe ſhall avoid a Rent Charge granted by her Siſter. If the Husband makes a Leaſe of an Acre

Acre which is after aſſigned to his Wife by a Recovery in Dower upon a Title which ſhe had at that time, ſhe ſhall avoid the Leaſe, &c. forall. *Quære* in both caſes. If one Parcener recovers *pro rata* againſt her Companion, ſhe ſhall avoid the Charge made by her in the Land recovered as an Exchanger ſhall do.

Land recovered in value after Partition by one Parcener ſhall be rateable.

A. ſeiſed of two Acres hath two Daughters, and grants a Rent Charge out of one Acre to the Eldeſt and dies, they make Partition, the Eldeſt hath the Land Charged, and the other being impleaded Recovers againſt the Eldeſt *pro rata*, ſhe ſhall hold the Land Recovered in value *pro rata* with the portion of the Rent.

If Parceners make Partition, and one aliens in Fee, a Stranger by a Title Paramount enters upon the other, ſhe ſhall not occupy the Land with the Feoffee; for the privity is diſſolved; for ſhe cannot recover *pro rata*; If *A.* be ſeiſed of one Acre in tail, and of another in Fee, hath two Daughters, they make Partition, the younger hath the Acre in tail, the Lord of whom the Acre in Fee is holden ſhall

take notice of this Partition, it ſeems otherwiſe for a Donor of an Acre in tail; for he ſhall not be bound by that Partition unduly made, no more than the Iſſue in tail ſhall be, but the parties that made the Partition, being of full age are concluded; but if one Acre in tail be allotted to one, and the other Acre in tail to the other, the Donor is concluded.

If Partition be of Land in tail, and a Rent is granted for equality of Partition, that Rent ſhall be in tail, 2 *H.* 7. 5. But if there be Parceners of two Acres, one in tail, and the other in Fee, and ſhe which hath the Acre in Fee grants the Rent to the other for Equality, that Rent ſhall be but in tail, but if that Rent had been granted to her which had the Fee, it ſhall be in Fee; for if ſhe dies without Iſſue her Heir ſhall have it ſo long as the other hath Iſſue of her body; for til that ceaſes the Partition ſtands: but if there be four Acres, three in Fee, and one in tail, and ſhe which hath the third Acre grants a Rent for equality, that ſhall be a Fee *Quia ſequitur magis principale.*

Three Parceners in tail make a Feoffment with Warranty, the Eldeſt firſt, and the youngeſt after dies without Iſſue, the ſecond hath Iſſue

and

and dies, the Iſſue brings a *Formedon*, ſhe ſhall recover a Moity of the part of the eldeſt, and a moity of the part of the youngeſt, and no more; for the Warranty of the Eldeſt was collateral to the ſecond for the part of the ſecond; for the other part ſhe could not make her ſelf Heir to her that made the Warranty, but yet for the part of the Eldeſt, the Warranty is Lineall to the ſecond and youngeſt Daughter; for they might Inherit as Heir to her, and for the part of the youngeſt as to her ſelf and her Heirs, for their third part the Warranty of the Eldeſt is collateral; for the youngeſt or her Heirs could not make themſelves Heirs of that third part to the Eldeſt who made the Warranty, ſo that the Warranty of the Eldeſt ſhall enure, as aforeſaid. Then as to the youngeſt, who died laſt, her Warranty as to the ſecond Siſters part is collaterall, and to her Iſſue; for they cannot make themſelves Heirs to her who made the Warranty, &c. But as to a Moity of the Eldeſt, 'tis Lineall, and as to the other Moity collateral; for by poſſibility the youngeſt and the ſecond might have had the part of the Eldeſt by Deſcent, if the Eldeſt had died firſt, as ſhe did, then if the

youngeſt dies without Iſſue, the Moity of the third part which deſcends to her from the Eldeſt, deſcends to the ſecond as Heir to the youngeſt. Then as to the other third part of the Eldeſt, the Warranty of the youngeſt is collaterall to the ſecond; for the ſecond as to the Moity of that third part could not have been Heir to the youngeſt, who made the Warranty, but ought to have been as immediate Heir to the Eldeſt, and as to her own part her Warranty as the ſecond is Lineall; for by poſſibility ſhe might have had that part as Heir to the youngeſt, then being the youngeſt is dead without Iſſue, the Warranty of the Eldeſt as to a Moity of the part of the youngeſt is Lineal, and as to the other part of that part 'tis collaterall to the ſecond; for by poſſibility the youngeſt might firſt have died, and then her part deſcends to the Eldeſt and the ſecond, and ſo a Moity of that might deſcend from the Eldeſt to the ſecond, and therefore the Warranty of the Fldeſt ſhall be Lineall for one Moity of the part of the youngeſt, and for the other Moity of the part of the youngeſt 'tis Collaterall, and ſo the Warranty of the Eldeſt which upon the deſcent was Collaterall to the youngeſt;

youngeſt; for the part of the youngeſt, is now changed for the Moity, and made Lineal for the Moity. *v.* 9. *H.* 5. 12. 4 *H.* 7. 18. Three Parceners make Partition, the Eldeſt hath one Acre in Fee, the ſecond another Acre in Fee, the third one in tail, all being of full age, the Eldeſt dies, her Iſſue enters upon the youngeſt (as ſhe may) the ſecond may enter alſo, and the Partition is defeated; for when the youngeſt is outed, the ſecond ſhall have part of that to which the Iſſue of the Eldeſt is remitted, as ſhe would if ſhe had recovered in a *Formedon*, if the ſecond may not enter it will be a miſchief; for ſhe cannot have *Aid*, being the other holds *pro indiviſo*.

A. hath two Daughters by one *Venter*, and a third by another, the youngeſt is ſeiſed of three Acres of equall value, and grants a Rent of three ſhillings to the Father in Fee, and then infeoffs the ſecond of one Acre, who dies without Iſſue, ſo that it deſcends to the Eldeſt, the Father dies, the Eldeſt ſhall have the Rent, but if the ſecond had infeoffed the Eldeſt of the Acre, then ſhe ſhould have nothing; for in the firſt caſe ſhe hath the Land by deſcent, and the Rent alſo, and therefore the Rent ſhall be appor-

cioned, but in the other caſe ſhe hath the Land by purchaſe, in which caſe the Rent ſhall be extinct, though ſhe hath the Rent by deſcent, or not, and though the purchaſe was before the deſcent or after. And if a man hath a Rent of twenty ſhillings out of twenty Acres of equall value, and one Acre deſcends to his Wife, all the Rent is ſuſpended; for it cannot be apporcioned when he is ſeiſed of part of the Land *in auter droit*; but if ſhe dies, and he is Tenant by the Curteſie it ſhall be apporcioned; for the Land continues in him by the Act of the Law, which is equall to a deſcent; And if a Rent be in tail, and parcel of the Land deſcends to him in Fee, or the Rent be in Fee, and parcell of the Land deſcends to him in tail, there muſt be no apporcionment.

I. dies having two Daughters, one is attainted of Felony, a leaſe is made for life, the remainder to the right Heirs of *I.* the other ſhall take nothing in remainder, becauſe ſhe which is attainted is living.

Particeps Criminis.

IF the Lord procures one to diſſeiſe the Tenant, and the Diſſeiſor *ceſſes*, and

and the Lord recovers againſt him, he ſhall retain it againſt the Diſſeiſee; for by the procurement he is no Diſſeiſor, as it appears, 50 *E.* 3. 2. But ſee *Littleton contra in his Chapter of Remitter*; for he had cauſe to recover *de puiſne temps*: but otherwiſe if he had title of *Ceſſavit* at the time of the procurement and diſſeiſin, *Quære*, if he had ceaſed one year before the diſſeiſin and another year after? as if the Iſſue in tail procures one to diſſeiſe the Diſſeiſor of his Father, whoſe Heir is in by deſcent, againſt whom the Father recovers and dies, the Iſſue ſhall retain: but if he himſelf had recovered againſt the Diſſeiſor upon a title then in being to him at that time, he ſhall not be remitted. If one hath Title of *Formedon*, and he procures one to out the Tenant, to the intent that he may recover againſt him, and a ſtranger outs him, and after *I S.* recovers upon a Title *puiſne* to the procurer, and the other recovers againſt him by a *Formedon*, he is there remitted. And if two Jointenants have a Title of Action, where their entry is taken away, and one procures a ſtranger (*ut ſupra*) againſt whom they two recover, and he which was party dies, the other is remitted to all, but if he

which did not procure had died first, the other should not be remitted but to a moity, *Quære?*

Payment.

A Rent charge is issuing out of two Acres, the Tenant of the land makes a Feofment of one, the Grantee may distrain in one, or the other for all; but if one Tenant payes to him the Rent, if the other be distreined he shall plead the payment by his Companion, for it discharges the whole Tenancy.

Place.

IF *A.* leases land in two Counties, rendring a Rent, it is one entire Rent, and he may distrain in one County for all, but he must have severall *Assizes*, and in every County make his plaint for all the Rent: but it seems that upon a Rescous in one County he shall have an *Assize* in the other, *Quære.*

Pleas.

IF a man hath a Wife, and makes severall Feofments with warranty, and

and dies, the Wife brings Dower against one of the Feoffees, he may plead that the Heir hath endowed her having regard unto all the land; for there is a great privity betwixt the Tenant and the Heir, for the Tenant may vouch the Heir, and it seems that he might plead that one Feoffee had endowed the Wife, for it goes in discharge of the Tenancy.

Some think that Guardian *in fact* in Dower shall not plead detinue of the body of the Heire, for none can plead that but he whose title commenced when the Title of Dower commenc'd: but the Guardian *in droit* may plead it, and if the Heir make a Feofment, the Feoffee shall not plead *detinue of Charters* in dower.

If an Obligation be delivered in *owell maine* to *I.* who breaks the seal, In detinue If he should not plead a release to the Obligor if it would be heard, and yet *Paston* in 9 *H.* 6. 19. *b.* sayes, that the Goaler cannot plead a Release made to him that escapes.

Possession.

IF the Tenant dies without Heir, the Law casts the possession of the Tenancy upon the Lord before Entry, but

but if the Tenant is attainted of Felony, he ſhall not have the poſſeſſion in fact or in Law before Entry.

If one Jointenant leaſes his part for years, a ſtranger enters, claiming the moity of the other, who waives the poſſeſſion; it ſeems it is a Diſſeiſin to him, though the Termor continues in, for they are Tenants in common, and though the poſſeſſion of the Leſſee be the poſſeſſion of him in Reverſion, *ſc.* his Companion: but *è contra* if the Termor had waived the poſſeſſion and the other continues in, it ſeems that he in Reverſion cannot be out of poſſeſſion, for his Joint Companion held it.

Two Jointenants in Fee of a Rent Charge, a Stranger takes it to the uſe of *I.* one releaſeth to the *Pernor*, the other to the Tenant, if by the laſt releaſe he ſhall be ſaid in poſſeſſion *ab initio*, then the firſt releaſe to the *Pernor* is void; for the poſſeſſion of one is the poſſeſſion of both.

Poſſeſſio fratris.

A. Makes a Leaſe for life, and dies, having a Son and a Daughter by one *venter*, and a Son by another, the Eldeſt Son grants the Reverſion in

in tail, the Tenant atturns, and he dies, the Grantee in tail dies without Iſſue, Tenant for life dies, it ſeems the Daughter ſhall have the Land, not the youngeſt Son.

The Diſſeiſee dies having a Son and a Daughter by one *venter*, and a Son by another, the Son after the deſcent enters upon the Heir of the Diſſeiſor, and dies without Iſſue, the Daughter ſhall not have the Land; for his poſſeſſion was tortious, if the Father dies ſeiſed, and the Eldeſt Son makes a Leaſe for life, the mother recovers Dower againſt the Leſſee, the Son dies, the Daughter ſhall have the Reverſion, and not the Son. But if Tenant for life dies after the death of the Son, and during the life of the Tenant in Dower. *Quære*, who ſhall have the Reverſion, the Son or Daughter? If *A.* makes a Leaſe for life, and dies, his Eldeſt Son diſſeiſes Tenant for life and dies, Tenant for life dies, the Son ſhall have the Land from the Daughter, which is put in the book of *Aſſ.* and the principall caſe is, the Eldeſt Son endows his Mother and dies, if the youngeſt Son, or the collaterall Heir of the Eldeſt ſhall have the Land.

The Father dies ſeiſed of two Acres, the Son enters into one ſaying nothing,

if

if that ſhall be a ſufficient poſſeſſion of the other Acre, to make the Siſter to be Heir. *Quære.* Some think it ſhall not. If a Diſſeiſor or Feoffor on Condition enter into one Acre ſaying nothing, there no more ſhall be gained by that Entry; but in the principall caſe, if the Acres had deſcended one from the Father, and another from the Mother, then the Entry into one is an Entry but into that only. So if it had been on a Title for ſeveral Conditions, 9 *H.* 7. 25. So the Entry of the Baſtard into one Acre ſhall deveſt no more than that; for the *Mulier* had a poſſeſſion in Law. *Quære.*

If a man makes a Leaſe for years and dies, this poſſeſſion in Law of the Reverſion is ſufficient to make the ſiſter Heir.

Quare Impedit.

IN a *Quare Impedit* againſt the Patron and Incumbent it is no plea for the Incumbent to ſay, that he hath been in ſix months upon the preſentation of the Patron; for none can plead Plenalty, but he who by ſuch plea may gain the Patronage, and againſt whom a Writ of *Right* of Advowſon is maintainable, *Quod vide in* 16 E. 4.

16 *E.* 4. 11. But in a *Quare Impedit* againſt the Ordinary and Incumbent, the Incumbent ſhall ſay, that he hath been in ſix months upon the Collation of the Biſhop by reaſon of *Laps*, becauſe no Patronage is gained by that, ſo note the *Diverſity*, 2 *R.* 2. *Encumbent* 4. 18 *E.* 3. *Quare Imp.* 4 8. 13 *H.* 8. 14. 14 *H.* 8. 31. 39 *E.* 3. 30.

Recognizance, vide *Statute.*

Record.

IF a Record in the *C. B.* be pleaded in any other Court of the King, where it is requiſite to be produced, it muſt be exemplified under the Great Seal of *England*, and the Seal of the Court is not ſufficient, but if he pleads it in *C. B.* there if he ſhews the Exemplification under the Seal of the Court it ſufficeth; for in the one caſe it is *Teſte meipſo*, and in the other, *Teſte* the Chief Juſtice.

Relation.

IF a Feoffment be made of a Mannor when Attornment is had the ſervices paſſe *ab initio.* If a Leaſe be made for life the Remainder to the King, and Livery

Livery is made, and after the Deed is inrolled, now the Remainder paſſes to the *King*, as a Remainder, *ab initio.*

If Land be given to *Baron & Fem* in Fee, he dies, and the Wife waives the poſſeſſion, and recovers her Dower againſt the Heir, ſhe ſhall recover Damages; for by her refuſall the Husband ſhall be ſaid to die ſeiſed. *Keylway* 104. *p.* 14.

If a man who hath a Villein delivers an Eſcrowl of Enfranchiſement, to be delivered to his Villein ſeven years after, and before the end of the ſeven years he dies, and the Deed is after delivered, that will be a good Enfranchiſement by relation.

Vide *Barg. & Sale.*

Releaſe.

LOrd, Meſne, and Tenant, the Tenant holds in Socage, and the Meſne in *Chivalry*, the Tenant makes a Gift in Frankmarriage, the Meſne releaſeth to the Donor, the four degrees paſſe, the Donor ſeiſeth the Ward of the Iſſue, and enters into the Land, and he brings an Action of treſpaſs, ſome think it is maintainable.

If

If Leſſee for years makes a Feoffment to two, a Releaſe to one ſhall inure to both.

If Tenant in tail makes a Leaſe for life, the Remainder for life, and releaſeth to him in Remainder, and his Heirs, if the firſt Tenant for life dies in the life of Tenant in tail, it is a Diſcontinuance.

The Tenant holds ten Acres by ten pence, and makes a Feoffment of one, the Lord grants the Rent, reſerving the Fealty, the Tenant Atturns, the Grantee releaſeth all his Right in the Land to the Tenant, yet he ſhall have one penny; for the Feoffment ſevered the Seignory, and by the Grant two Rents paſſed, and but one is extinct by the Releaſe, *viz.* the Rent of Nine pence.

Two Diſſeiſors make a Gift in tail to hold in *Chivalry*, the Diſſeiſee releaſeth to one, the Donee dies; ſome think this Releaſe will inure to both.

Two Women diſſeiſe another, and make a Feofment to their Father, who dies, ſo that the Land diſcends to them, the Diſſeiſee Releaſeth to one, it ſhall inure to both; for betwixt themſelves they are in by Title. If a Diſſeiſor dies ſeiſed having two Daughters Baſtards, and the Diſſeiſee releaſeth

ſeth to one of them, that ſhall inure to both.

A. makes a Feoffment to two upon Condition, which is broken, the Feoffor releaſeth to one, it ſhall operate to both; for they are not in by wrong, and a Releaſe where it countervails an Entry and Feoffment doth not extend to Titles. If a Diſſeiſee enters upon two Diſſeiſors, and they recover falſly in an *Aſſize*, and he Releaſeth to one, that ſhall inure to both; for between themſelves and the Diſſeiſee alſo they are in by Title. If an Infant infeoffs two, and at his full age releaſeth to one, it goes to both. If two Diſſeiſors make a Feoffment, and take back an Eſtate, a Releaſe to one inures to both; for though in Reſpect of the Diſſeiſee they be Diſſeiſors, yet in Relation to themſelves they are in by Title. So if a Diſſeiſor makes a Feoffment, and takes back an Eſtate to himſelf for life, a Releaſe to him will go to him in Remainder.

If a Diſſeiſor makes a Leaſe for life, and the Leſſee makes a Feofment, and the Diſſeiſee releaſeth to the Feoffee, the right of Entry which the Diſſeiſee had is taken away; for a Releaſe of the Diſſeiſee will avoid all rights of entry, but not Titles.

If

If a Diſſeiſor grants a Rent-charge, and is diſſeiſed, and a Releaſe is made to the ſecond Diſſeiſor, the Charge remains, but the Dower of the Wife not; for the one is executed, and the other executory only. If two Diſſeiſors make a leaſe for life, with a Remainder in fee, the Diſſeiſee releaſeth to the Tenant for life, the Wife of the firſt Diſſeiſor ſhall be endowed. If my Tenant for life is diſſeiſed by *A.* who is diſſeiſed by *B.* to whom I releaſe, the Wife of *A.* ſhall be endowed; and if Tenant for life dies, *A.* may enter upon *B.* and retain for ever.

After the Vouchee hath entred into *Warranty*, an Anceſtor collaterall of the Demandant releaſeth to the Vouchee with warranty, and dies; now the Vouchee cannot plead this Warranty againſt the Demandant, for the releaſe was void; for though the Vouchee ſhall be Tenant to the Demandant, yet he ſhall not be ſo to a Stranger, for if a ſtranger will releaſe to him after he hath entred into Warranty, the Releaſe is void. But if an Anceſtor collateral had releaſed to the Tenant after the Entry of the Vouchee into *Warranty*, the Vouchee may plead it. *Quære* in the firſt caſe, though the Releaſe

leaſe be void, yet if the Warranty ſhall not be good?

A Feofment is made rendring a Rent, and upon default of payment a re-entry, the Rent is behind, and then the Leſſor releaſeth the Rent.

There is a difference between a Releaſe in Fact and in Law. If the Tenant makes a Leaſe for life, and the Lord releaſeth to the Tenant for life, all his right in the Seignory is utterly extinct. But if the Lord diſtrein the Tenant, and makes a Leaſe for life, he hath not extinguiſhed his Seignory for ever, for a Releaſe in Law is taken moſt favourable.

If a Rent be granted for life, and by another Deed the Grantor releaſeth to the Grantee all his right in the Rent; and if it be behinde, that he ſhall diſtrain for it, yet it is but a Rent Seck.

If two are diſſeiſed, and one releaſeth to the Diſſeiſor all his right in the one moity, his right is gone in all, and yet his right was *per my & per tout*; but being he hath releaſed all his right in one moity, which extends *per my & per tout*, that is the reaſon why, &c. So if there be two Diſſeiſors, and one Diſſeiſee releaſeth to one, for he was ſeiſed *per my & per tout*. But if he had releaſed

releaſed all all his right to one, *viz.* in the moity of that one, and not in a moity generally, the Law had been otherwiſe, *viz.* that his moity remains in the moity of the other moity.

A Diſſeiſor having a Wife makes a Leaſe for life, the Leſſee makes a leaſe to the Wife, for the life of the Wife, the Husband accepts the Deed, and agrees to it, the Diſſeiſee releaſeth to the Wife, the Husband dies, the Releaſe is void; for, by the Leaſe to the Wife the Husband had title of Entry for the Forfeiture, and then he is remitted, and though he agrees that the Wife ſhall take the Eſtate, yet it is no Eſtopple, then the Husband being remitted there is no poſſeſſion in the Wife upon which the Releaſe may operate. If a Diſſeiſor having a Wife makes a leaſe for life to *A.* who makes a leaſe to *B.* for life, the Diſſeiſee releaſeth to *B.* the Wife of the Diſſeiſor ſhall be endowed, for the releaſe doth not countervail an Entry and Feofment. If a Diſſeiſor makes a Leaſe for life, the Leſſee makes a Feofment, and the Diſſeiſee Releaſeth to the Feoffee, that takes away the Entry of the Diſſeiſor; For ſuch a Releaſe takes away all rights, but not Titles, as Conditions or Dower. But if a Diſ-

ſeiſor be diſſeiſed, & the Diſſeiſee releaſes to the ſecond Diſſeiſor, that takes away the Dower of the firſt Diſſeiſors Wife.

Tenant pur auter vy, the Remainder to *I.* for his life, *I.* releaſeth to the Leſſee, that Releaſe is good, and inures by way of *Fezance de Eſtate*, for if a Remainder had been limited to the Tenant for the life of *I.* that had been good, therefore here he hath a ſufficient Tenant for life, and a poſſeſſion whereupon a Releaſe may operate, but if the firſt Leſſee had had an Eſtate for his own life, then the Releaſe had inured by way of Extinguiſhment; for the firſt Eſtate was greater having regard to the Leſſee. If a Leaſe be made for forty years, the Remainder for ten years, and he in Remainder releaſeth to the Tenant for forty years, he ſhall have it for fifty years; for the forty years cannot be drown'd: If the Remainder had been a leaſe for an hundred years; for one Chattle cannot conſume another, for it is all one as if Leſſee for forty years ſhould make a leaſe for ten years, and after will releaſe to the Leſſee, he ſhall have it for forty, and not for thirty years. If a leaſe be made for years, the remainder to *A.* for life, the remainder to *B.* for life: if *B.* will releaſe

leaſe to the Leſſee, that is cleerly Good; for there is ſufficient privity between them although he hath not the next immediate Eſtate.

But if the Leſſee will releaſe to his Leſſor, that is void; for the Leſſee was in poſſeſſion. So if the Guardian Releaſeth to the Heir, that is void. If two Diſſeiſors make a Leaſe for life, and the Diſſeiſee releaſeth to one, that will inure to both; for of neceſſity it will inure to Leſſee for life: and ſo by conſequence to them in Reverſion, and that is to two. If Tenant for life is diſſeiſed by two, who are diſſeiſed by another, the Leſſor releaſeth to the laſt Diſſeiſor, the firſt Diſſeiſors may enter notwithſtanding the Releaſe; for the Releaſor had no Title of Entry. But if his Entry had been lawful, as if his Tenant for life had infeoffed a Stranger, who had been diſſeiſed, and the Leſſor had releaſed to the Diſſeiſor the Leſſee could not have entred; for the Entry of the Leſſor (who had a Title *Paramount*) was congeable. As if a Diſſeiſor makes a Leaſe for life, and the Leſſee makes a Feofment, and the Diſſeiſee releaſeth to the Feoffee, the Diſſeiſor cannot Enter. But if the Heir of the Diſſeiſor, who is in by deſcent makes a Leaſe for life, the Leſſee

makes a Feoffment, and the Diſſeiſee releaſeth to the Feoffee, the Leſſor may enter? for the Diſſeiſee could not, 9 *H.* 7. 25. *per Fineux.* If an Infant makes a Leaſe for life, and the Leſſee grants his Eſtate with Warranty, the Infant brings a *Dum fuit infra Etatem*, and the Tenant vouches the Grantor, who enters into Warranty, and loſeth, the Demandant Releaſeth to him and his Heirs, ſome think the Releaſe is void; for he is Tenant only to anſwer the Action, but a Releaſe which is to enlarge an Eſtate muſt inure upon a privity of Eſtate. And therefore a Releaſe made to Tenant by the Curteſie in Fee after he hath granted over his Eſtate is void, and yet an Action of Waſt ſhall be maintainable againſt him by the Heir, and he ſhall Attorn. If a Leaſe be made for life, the Remainder for life, the Tenant for life dies, and before the Entry of him in Remainder the Leſſor Releaſeth to him in Fee, that ſhall inure according to the words. But in a Writ of Entry in the *Per*, if the Tenant vouch him, by whom, &c. who enters into Warranty, and the Demandant Releaſeth to him, that inures by way of Extinguiſhment. If a woman who hath cauſe of Dower Releaſeth to

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the Guardian, that takes away her Title and Eſtate, though the Gardian had but a Chattle, and the Heir ſhall Advantage of it. It was ſaid in the caſe of the *Dum fuit infra ætatem*, if he had Releaſed in tail. a greater Eſtate ſhould not have paſſed; for though it doth not appear by the *Dum fuit infra ætatem* what Eſtate he claims (for the Writ is generall) yet when he enters generally into the Warranty, he ſhall not be ſaid to have a Fee againſt the Demandant, but the Demandant ſhall make an Averment, that he did not make the Deviſe but only for life. A Releaſe made to the Patron when the Church is full doth not extinguiſh an Annuity, otherwiſe if it had been in the time of vacation, 21 *H.* 7. 41. but a Releaſe to the Ordinary peradventure will not avail; Tenant for life grants a Rent Charge, a Releaſe to him in Reverſion will not extinguiſh it, no more than if he in Reverſion grants a Rent Charge, a Releaſe to Tenant for life will extinguiſh it.

If there be two Diſſeiſors, and one makes a Leaſe of a Moity for years, reſerving a Rent with a Re-entry for not payment, the Diſſeiſee releaſeth to the other who did not make a Leaſe, he ſhall have the whole Freehold of all

the Land, and the Leſſee ſhall not pay the Rent to him; for he comes to the Reverſion by Title *Paramount*, and not by any Privity.

A. ours his Termor for years, and then makes a Leaſe for years, the firſt Termor releaſeth to the ſecond, the firſt Leſſor may enter and have the Land againſt them both; for by the Releaſe the Right of the firſt Termor was extinct. As if a Rent Charge be granted to the Diſſeiſor, &c. and it doth not fortifie the Eſtate of the ſecond Leſſee during the firſt Term; for if the firſt Leaſe had bin for twenty years, and the ſecond but for a year, yet by the Releaſe of the firſt Leſſee to the ſecond, all the firſt Eſtate ſhall be extinguiſhed. But if he had been Tenant for life, and the Diſſeiſee Releaſeth to the Diſſeiſor, now during his life the Leſſor cannot enter, otherwiſe if he had been Tenant for years; for in one caſe the Diſſeiſor had a Freehold in him which might be fortified, and in the other caſe but a Chattle.

Although the Husband cannot give any thing to the Wife immediately, yet if a Diſſeiſoreſſe makes a Leaſe for life, the Remainder to her ſelf in tail, the Remainder to *A.* in Fee, and marries the Diſſeiſee, who releaſeth to

Tenant

Tenant for life, that will inure to his Wife.

If an Infant Diſſeiſor makes a Feoffment, and the Feoffee dies ſeiſed, and his Heir enters, to whom the Diſſeiſee releaſeth, yet the Infant ſhall have a *Dum fuit infra ætatem*, and ſhall recover; for he demauds the poſſeſſion to which he had more Right than the Diſſeiſee, and the Tenant ought to anſwer to the *Demiſe*, and not to the Right: As if the Heir of the Diſſeiſor, who is in by Deſcent, brings an *Aſſize* againſt his Diſſeiſor, it is no plea for him to plead the Releaſe of the Diſſeiſee; for he demands the poſſeſſion to which he had more Right than the Diſſeiſee. So if the Diſſeiſor recovers in an Aſſize by erroneous Judgement againſt his Diſſeiſor, and the Diſſeiſee releaſeth to him that hath recovered, and the other brings a Writ of Error, it is no plea for him to plead the Releaſe; for the intent of the Suit was to correct the Error upon the Record. If a Diſſeiſor makes a Leaſe for life, and the Leſſee makes a Feoffment to *A.* who obtains a Releaſe from the Diſſeiſee, the Diſſeiſor brings a *Conſimili Caſu*, ſome think he ſhall recover; but if the Heir of the Feoffee, who is in by Deſcent, &c. gets a Releaſe, it

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is cleer the Diſſeiſor may have an Action, and the Tenant ought to anſwer to the *Demiſe*, and not to the Right of the Land in both caſes. If a Diſſeiſor enters upon his Feoffee for breach of a Condition, the Feoffee ſhall not have a Writ of Right, though the Right of the Diſſeiſee be releaſed to him before the breach of the Condition. So if the Diſſeiſee enters upon the Heir, who is in by Deſcent, and makes a Feoffment, or releaſeth of ſuch an Heir, and the Heir re-enters, or if one who hath a Title brings a *Formedon in Remainder* againſt an Abator, and recovers by default. See the reſt of the caſe in 9 *H.* 7. 25. In all theſe caſes he to whom the Releaſe was made, or the Right was given, ſhall not have a Writ of *Right*, but it ſhall goe in advantage of him that Removes the poſſeſſion; for being one hath a right in poſſeſſion, and recontinues it, that draws the very right to it, and the Right by it ſelf ſhall not be left in the other. Note that in all theſe caſes, the Right comes after the poſſeſſion; but if the Right were before the poſſeſſion, and then the poſſeſſion is removed, the Right remains in the perſon to whom it was given. As if the Heir of the Diſſeiſor, who is in by deſcent,

deſcent, enfeoffs *A.* and ſeveral other Feoffments are made, and after the Land comes to the Heir again, and the Diſſeiſor enters upon him, and he outs him. Now if the Diſſeiſee brings a Writ of Right upon his firſt poſſeſſion, he ſhall be deluge by vouching of the Feoffees; but he may have a Writ of Right upon the laſt poſſeſſion which he had by Diſſeiſin, and that is beyond all the *Vouchers*, and though the poſſeſſion was removed, yet that is not materiall; for *Littleton* ſaith, the effect of the Writ is the meer Right. the Husband diſcontinues in Fee, and takes back an Eſtate to himſelf and his Wife for their lives, the Husband makes a Feoffment and dies, the Wife Releaſeth to the ſecond Feoffee, yet the firſt Feoffee may enter for the Forfeiture, and ſhe hath no Remedy, and this caſe is ſuppoſed before the ſtatute of 32 *H.* 8. But if the wife had not releaſed, but the firſt Feoffee had entered upon the ſecond for the Forfeiture, the Wife (the Husband being dead) might enter upon him; for ſhe may claim by the Leaſe, and then the Entry for the forfeiture had avoided the Diſcontinuance, and ſo ſhe may enter by vertue of the Leaſe made by the firſt *Diſcontinuer*. If Tenant for life

life be diſſeiſed, and the Diſſeiſor is diſſeiſed, and the Leſſor releaſeth to the ſecond Diſſeiſor, and the firſt Diſſeiſor outs him, he hath no Remedy by Writ of Right, or otherwiſe, *Quod nota.*

A Gift in tail is made with Warranty, the Donee releaſeth the Warranty to the Donor, the Reverſion is granted, the Donee atturns, if the Iſſue in tail be impleaded, he ſhall not vouch; for the Releaſe hath extinguiſht the Warranty for ever; for the Statute is of Tenements, &c. and this is no Tenement, but a Covenant reall, which is Extinguiſhed by the Releaſe. As if an Annuity be granted in tail, a Releaſe from the Grantee diſchargeth it. If a falſe Verdict paſſeth againſt Tenant in tail, a Releaſe made by Tenant in tail of all his Right ſhall not bar the Iſſue of his atttaint, but if he releaſeth all falſe Oaths to one of the *Petit Jury. Quære*, if the Iſſue ſhall have an Attaint? And a *Partitione faciendâ* is maintainable by the Iſſue in tail, by the equity of the Statute *de donis*, &c. *& contra form. Feoffam. & Contributione faciend:* and a Releaſe of them will not bar the Iſſue; for it is of the Land, and an *Uſe* in tail is taken by Equity, and Tenant by Copy,

Copy, &c. ſhall be taken by Equity to have an Eſtate tail, and ſhall have a plaint in nature of a *Formedon*. So by ſome the Releaſe in the principall caſe is no bar; but Tenant in tail by his Releaſe may extinguiſh an Accquittall granted by the Donor. And Execution of a Recovery in value by reaſon of a Warranty, and not a Recovery *pro rata* againſt his Coparcener.

If a man binds himſelf and his Heirs in twenty pound and dies, his Executors having *Aſſetts*, the Obligee releaſeth all Actions of Debt to the Heir, the Executors pay the *Aſſetts* to other Creditors, ſome think the Obligee ſhall have an Action of Debt againſt the Heir; for at the time of the Releaſe the Obligee was not intitled to have an Action of debt againſt the Heir, but if neither the Heir nor Executors had *Aſſetts*, and then the Debt is releaſed to the Heir, and after *Aſſetts* come to the hands of the Heir, it ſeems the releaſe will bar him. If Tenant for life commits Waſt, and grants over his Eſtate, the Leſſor releaſeth all Actions to the Grantee, yet he ſhall have an Action againſt the Grantor; for he was not intitled to have an Action againſt the Grantee. So if Tenant in Dower, or *by the Curteſie*, who have granted

granted over their Eſtates, otherwiſe of a Releaſe of Land.

A. makes a Leaſe for life, and grants a Rent out of the Reverſion, a Releaſe made by the Grantee to Tenant for life will not extinguiſh the Rent: ſo if a Rent be granted by Tenant for life, a Releaſe to him in Reverſion will not extinguiſh the Rent.

A Leaſe is made for life, the Remainder for years, he in Remainder Releaſeth to Tenant for life all his Right in the Land, the yeares are drownd; but if the Releaſe had been, *Habendum* the Land during the years, then the term for years had continued. As if a Leaſe is made for life, and after a Releaſe is made to Tenant for life, *Habendum* to him for forty years after the Leaſe for life ended, there he ſhall take it as the words direct: And ſome ſay, that a Releaſe made by Tenant for years to the Leſſor extinguiſheth the Term, otherwiſe of a Releaſe by Tenant for life. And if a Leaſe for years be made to commence at Eaſter, and before Eaſter he releaſeth all his Right to the Leſſor, the years are Extinguiſhed. If Leſſee for years be ejected, and Releaſeth to the Diſſeiſor, the Leſſor may enter, but otherwiſe of a Releaſe made by Tenant for life.

If

If one makes and delivers an Obligation at *Michaelmas*, which bears date at *Chriſtmas* following, and at the Feaſt of *All Saints* he releaſeth to the Obligor all Actions, and after *Chriſtmas* he brings an Action of Debt, he ſhall plead the Releaſe, and ſay the Obligation was delivered at *Michaelmas*, and that the Releaſe was delivered at *All Saints*, according to the date.

If the Diſſeiſee releaſeth to the Diſſeiſor all Actions, and dies, and the Diſſeiſor dies, and his Heir Enters, and the Land diſcends to the Heir of the Diſſeiſee, it ſeems by the Releaſe of all Actions, which he hath, or may have afterward by the ſame Right, are diſcharged. So of Actions which his Heir might have for the ſame Diſſeiſin. So that a Writ of *Entry* in the *Quibus* is Releaſed, although his Heir had no cauſe of Action at that time, then it is in a manner as if he had releaſed after the deſcent as to the Extinguiſhment of the Action, then being he had a Right notwithſtanding the Releaſe, ſo that he might enter, that Right is not taken away by the deſcent after. Some think a Releaſe of Actions is but a Concluſion, which goes in privity of blood, and not of Eſtate: and therefore after ſuch a Releaſe to the

the Diſſeiſor, if he aliens over, the releaſe is not pleadable by the Alienee; for he is not privy, and it doth not go with the Eſtate. So if a Diſſeiſor makes a Leaſe for life, with a Remainder over, and the Diſſeiſee releaſeth all Actions reall to the Tenant for life, who dies, he in Remainder cannot plead it, as if it had been a Releaſe of Right, and therefore if a Releaſe of all Actions had bin made to him in Remainder, that had been void to all other purpoſes, ſo ſuch a Releaſe of Actions ſhall not extinguiſh a Right, if the Entry be taken away, otherwiſe than by an *Eſtopple*, which being removed by the deſcent in Law, the Releaſe ceaſeth to be a Concluſion after. Some think if the Heir of the Diſſeiſor infeoffs two, and the Diſſeiſee releaſeth all Actions to one of them, and he dies, the other ſhall not plead it, and ſo if two are Diſſeiſed, and one releaſeth all Actions to him that is in by deſcent, and dies, the other, as Survivor ſhall have an Action for all the Land.

If Tenant for life commits Waſt, and grants over his Eſtate, in Waſt brought againſt him he may plead a Releaſe in the Land, and yet he hath nothing in the Land.

A Conuſor of a Statute Merchant is in Execution, and his Land alſo, the Conuſee releaſeth to him all his debts, afterwards the Goaler lets him have his Liberty, it ſeems that the Execution is diſcharged by the Releaſe; for the Debt is in *Eſſe* until the profits ſatisfie it, or elſe the Execution could not remain, as the Heir is in Ward until he be capable to perform his Services, but if the Seignory be releaſed to the Tenant, he is out of Ward for body and Land.

If he in Reverſion of a Seignory releaſeth to his Grantee for years, and to the Tenant of the Land, and to his Heirs. *Quære* how it ſhall inure? but if it had been to them two generally, then the Eſtate for years and all the Seignory had been extinct; for though it inlarges his Eſtate for life, and no more, yet without thoſe words, *His Heirs*, all the Reverſion is extinct, and conſequently the Eſtate for yeares, *Quod non negatur.* 8 *H.* 6. 24. But if it had been of a Rent Charge, and the Releaſe had been to them, the Grantee ſhall have it all for life, and the other the Fee, and ſo it ſhall inure to both.

Tenant for life and he in Reverſion grant a Rent Charge, the Grantee releaſeth all his Right to the Reverſion, if the Rent be extinct? Some think not; for their Eſtates being ſeverall ſo are their grants, and then a Releaſe to the Reverſioner will not extinguiſh a Rent iſſuing out of the poſſeſſion. And if it ſhall be taken to be the Grant of Tenant for life, and the Confirmation of him in reverſion, yet ſuch a Releaſe will not extinguiſh it; for though he purchaſeth the reverſion yet he ſhall have the Rent during the life of Tenant for life, and if it were ſeverall grants, a Releaſe to Tenant for life will not extinguiſh a Rent iſſuing out of the reverſion; for to this Charge the Tenant need not atturn.

The ſurviving Parcener may releaſe to the Husband of the other being Tenant by the Curteſie. And if one Parcener hath twenty Daughters and dies, the other may releaſe her whole part to either of them. But if Jointenants be of twenty Acres, and one makes a Feoffment of all his part in eighteen, perhaps the other can releaſe his right but in two Acres. But if Husband and Wife, and a ſtranger are Jointenants, the ſtranger may releaſe all his right to the wife only.

Tenant

Tenant for life, the remainder in Fee, makes a gift in tail, the remainder in Fee, he in the firſt remainder releaſeth all his right to the Donee, not ſaying, *and to his Heirs*, and then grants a Rent Charge to a ſtranger out of the Remainder in Fee, and dies, the Donee dies without Iſſue, the Heir of him in remainder enters, if he ſhall hold it charged? Some think the releaſe doth not give the right in Fee, which the Releaſor had, to the Releaſee; for then in a manner he doth releaſe to himſelf, but if the remainder had been in tail to him that had the remainder in Fee, then the releaſe had inured to the firſt Eſtate in tail, and to the Fee, and then if the laſt Fee be fortified, the Meſne remainder is eſtabliſhed, and ſo the releaſe inures to himſelf. But as to the other point which may be moved. If the remainder be good to him that had the remainder before? being it is out of him and in him at one and the ſame inſtant, it is good enough.

If one be diſſeiſed to the uſe of *A.* the Diſſeiſee releaſeth to the Diſſeiſor, yet *A.* may agree to the Diſſeiſin; for a releaſe doth not take away a Title any more than it doth a Condition, or a Rent Charge granted by him; or if

he covenants to ſtand ſeiſed to an *Uſe Executory* upon marriage, ſuch an uſe cannot be taken away by ſuch a releaſe. But if there had been two Diſſeiſors to the uſe of *A.* and the Diſſeiſee had releaſed to one of them, that will take away all the Title, *Cauſa patet.* So if Tenant for life releaſeth to his Diſſeiſor, that doth not reſtore the Reverſion; but if he had releaſed to one of the Diſſeiſors, it had been otherwiſe.

Land is holden of the Mannor of Dale by Fealty and twenty ſhillings, the Lord makes a Leaſe of the Mannor for years, rendring forty ſhillings with Atturnment, after the Leſſor releaſeth to the Tenant all his Right, if the Rent of forty ſhillings ſhall be apporcioned? by the Releaſe the Tenant is diſcharged of twenty ſhillings as well againſt the Leſſee as the Leſſor; for the Tenant holds it of the Lord *Paramount*, ſo he does not hold it of the Leſſee; for he cannot hold the ſame Land of two ſeverall Lords, and the Rent of forty ſhillings is as well payable for the ſervices, as for the demeſnes, although he cannot diſtrain, &c. as in the caſe of Sheep, 21 *H.* 7. 6.

If

If Feoffee upon Condition makes a Leaſe for life, a Releaſe of the Condition to the Tenant for life will extend to the Feoffee, as it will do of a Right or Rent. If there be Feoffee upon Condition of two Acres, and the Feoffor releaſeth the Condition in one Acre, if it be collaterall, it remains in the other; as of a Warranty annext to two Acres, a Releaſe in one, yet it remains in the other; for the Condition is ſeverall as the Right is; But if the Condition had been made to two, or by two, a Releaſe to one, or by one extinguiſheth all, as it ſhall do a Warranty.

Tenant for life of a Seignory purchaſeth the Tenancy *pur auter vye*, if the Lord releaſeth to him and his Heirs all his Right in the Tenancy, ſome think it ſhall inure by way of Extinguiſhment. But if he releaſes to him and his Heirs all his Right in the Seignory, that inures as an Enlargement of the Seignory. So the Meſne being a *Feme* marries the Tenant, the Lord releaſeth to the *Feme* and her Heirs all his Right in the Seignory, that inures to extinguiſh the Seignory only, and not the Meſnalty. But if he had releaſed to the Husband all his Right in the

Seignory, or Tenancy, the Seignory, and Meſnalty are extinct. But a Releaſe to the wife of all his right in the Tenancy had been void. But if the Lord had releaſed all his Right in the Seignory to Husband and Wife. *Quære*, but ſome think it inures to extinguiſh the Seignory, and not the Tenancy.

Two Jointenants in Fee of a Rent Charge, a Stranger receives it to the uſe of *A.* one releaſeth to the *Pernor*, and the other to the Tenant: If by the laſt releaſe he ſhall be ſaid in poſſeſſion *ab initio*, the firſt Releaſe to the *Pernor* was void; for the poſſeſſion of one is the poſſeſſion of both. If two Diſſeiſors grant a Rent Charge, and the diſſeiſee releaſeth to one, he ſhall hold it diſcharged; for the Grant of the other by the Releaſe is diſcharged, and the Grant being but by one is diſcharged as to all. And the *Pernor* ſhall hold it ſubject to the Agreement of *A.* for ſome think there ſhall be an Election after, as if he had granted his part to a Stranger.

A Releaſe to one Tenant in Common will not inure to his Companion for want of privity.

A. ſeiſed of an Houſe on the part of his Mother, is diſſeiſed by two, and they have *Eſtovers* granted to them in the ſame Houſe, the diſſeiſee releaſeth to one, the *Eſtovers* remain for part; for as to a Stranger the Releaſe doth not countervail an Entry and Feoffment. As if a diſſeiſor takes a Confirmation to hold by leſſer Services, and after the diſſeiſee releaſeth, yet he ſhall take advantage of the Confirmation. If the Son endows his Wife, *Ex aſſenſu patris*, and the diſſeiſee releaſeth to the diſſeiſor, if the dower ſhall be avoided or not? A Warranty made to the diſſeiſor is not gone, by a releaſe made by the diſſeiſee.

If a diſſeiſor having a Wife makes a Leaſe to *A.* for life, who makes a Leaſe to *B.* for life, the diſſeiſee releaſeth to *B.* the Wife of the diſſeiſor ſhall be endowed; for the Releaſe doth not amount to an Entry and Feoffment.

Two *Fems* diſſeiſe one, one marries, the diſſeiſee releaſeth to the Husband in Fee, that goes by way of Extinguiſhment to both the women; for it cannot inure as an

Entry and Feofment to one Woman, for ſhe is not privy to the Deed, and as an Entry and Feofment to the Husband it cannot inure; for he was in by title: and if the Releaſe had been to the other Woman, that ſhould not have deveſted the poſſeſſion of the Husband.

The Lord diſſeiſeth the Tenent and is diſſeiſed, the diſſeiſee releaſeth to the diſſeiſor of the Lord, the Seignory is extinct; for it doth not countervail an Entry and Feofment in reſpect of the Lord, but extinguiſheth the right of the Lord to the land, in which right to the land, the right which he had to the Seignory was ſuſpended. But if the Lord and a Stranger diſſeiſe the Tenant, and the Tenant releaſeth to the Stranger, the Seignory is revived, for there it inures as an Entry and Feofment againſt the Lord, and the Lord had not the right to the land: So if the Lord dies, and the other hath that by ſurvivorſhip.

Remainder.

LAnd is given to Husband and Wife, and to the Heir of the Husband begotten on the body of the Wife; and if the Husband dies without Iſſue by the Wife, then the land to remain to *A.* in Fee; the Husband and Wife die without Iſſue, *A.* enters, upon whom the Feoffor enters, and *A.* brings an *Aſſize*; ſome think it is maintainable, 14 *H.* 6. 25. ſuch a limitation good.

Tenant in tail makes a Feofment and dies, the diſcontinuee makes a Gift in tail, the remainder in fee to the firſt Iſſue in tail, the ſecond Tenant in tail dies without Iſſue, his Wife *Enſeint* with a Son, the Iſſue of the firſt entail enters, and after the other Iſſue is born, and enters upon him, and he brings an *Aſſize*; ſome think it is not maintainable.

A *Fem* Leſſee for life marries, a Confirmation is made to them two for their lives, that is a Remainder in the Husband, by reaſon of the joint-Eſtate of the Wife. So if land be given to *A.* &

B.

B. for the life of *B.* and after a Confirmation is made to them two for their lives, that is a Remainder in *A.* and the Jointure remains.

Land is given to Husband and Wife, and to the Heirs of the body of the Husband, the Remainder to Husband and Wife in ſpeciall tail; the Remainder is void. If a leaſe be made for the life of the Leſſee, the Remainder to the Leſſee for the life of *A.* that Remainder is void.

If land be given to one, *Habendum* to him and the Heirs males of his body, and the Heirs females of his body, he ſhall have it as a Remainder.

Land is given to two Women, *Quam diu ſimul vixerint*, the remainder to the right Heirs of her who firſt dies; one marries, and hath iſſue and dies; it ſeems the remainder is good notwithſtanding the incertainty. But if the Land ſhall be Aſſets in a *Formedon* or *Debt* againſt the Heir, *Quære?* ſome think it is not, for it was never in the Mother.

The Donor diſſeiſes Tenant in tail, and dies, and the Heir who is in

in by deſcent makes a Leaſe to the Iſſue within age, the Remainder in Fee, Tenant in tail dies, though the Iſſue be remitted yet the Remainder is good, becauſe it was a Livery once, and the Remitter was ſubſequent, as if the Leſſor diſſeiſeth his Tenant for life, and lets for the life of the diſſeiſee, the remainder in Fee, the diſſeiſee enters, yet him remainder ſhall hold it: but in both caſes it is a reverſion, and not a remainder. *Quære* of the firſt caſe.

If a Leaſe be made for life upon Condition, that if the Leſſee ſhall not have Iſſue during his life, that then it ſhall remain in Fee to *A.* and he dies without Iſſue, the remainder is void; for although a remainder may be limited upon Condition, yet the Condition ought to be performed during the life of Tenant for life. But if the Condition had been that if he had Iſſue during his life, that then it ſhould remain, the remainder had been good, if he had Iſſue, 7 *H.* 4. 6. A rent granted to one for the life of *A.* the remainder to the right Heirs of *A.* that cannot be during the life of *A.* and yet thought to be a good remainder; for it veſts in the ſame inſtant that the firſt Eſtate determines.

A remainder may be good to him that had the Remainder before.

Tenant for life makes a Leaſe for life, the remainder to his Leſſor, and a Stranger in Fee, ſome think the Stranger ſhall take all; for he cannot give a Fee in any part to him that had a Fee before.

Remitter.

TEnant in tail makes a Feoffment and dies, the Diſcontinuee makes a gift in tail, the Remainder to the Iſſue in Fee, the ſecond Tenant in tail dies without iſſue, his Wife *enſeint* with a Son, the Iſſue in the firſt intail enters, the Son is born, and enters upon him, and he brings an *Aſſize*, it is maintainable; for the remainder is limited to the Iſſue in the firſt intail, and he by vertue of his remainder enters, then he is remitted, but *Dy.* 129. makes it a *Quære*, but *Bendlows* 195. he is remitted, and ſo is the *Inſt.* 357. 11 *H.* 4. 1.

If the Diſſeiſee enters upon the Heir of the Diſſeiſor, and grants a Rent Charge and dies, the Iſſue ſhall hold it diſcharged; for though he hath the Right from the ſame Anceſtor that granted the Rent Charge, yet he is remit-

remitted to another poſſeſſion than deſcended to him. And if the Heir of the Diſſeiſee enters upon the Diſſeiſor, and grants a Rent Charge, and the Diſſeiſee dies, becauſe a new Right is come to him, he is remitted, and the Grantor ſhall hold it diſcharged. But if the Son diſſeiſes the Father, and grants a Rent Charge, and the Land deſcend to him, the Son ſhall hold it charged; for he is not remitted; for the Right deſcended to him from the ſame perſon to whom he did the wrong, and he ſhall be diſabled to claim a right from him whom he diſſeiſed. But in the other caſe he claims the Right from another. If the Father diſſeiſeth the Grandfather and dies, after he hath granted a Rent Charge, and the Grandfather dies, the Son ſhall hold it diſcharged; for he claims from the Grandfather. *Quere*; for the Entry of the Grandfather was taken away, and then when the Right of one, who cannot enter, deſcends, the Tenant is remitted. *Quere*, but if there be Lord, Meſne, and Tenant, and the Tenant aliens in *Mortmain*, the Lord *Paramount* enters, and grants a Rent Charge, and after his Title is come, *viz.* the year paſt, and the Meſne hath not entered,

entered, the Lord ſhall hold it diſcharged, and his Iſſue too, as it ſeems, for he ſhall not be remitted for a Title, as he ſhall for a Right accrued; but it ſeems he may bar him upon whom he enters, if he brings an *Aſſize*, and that by his Title.

Grandfather, Father, and Son; the Father diſſeiſes the Grandfather and dies, the Son endows the Wife of the Father, the Grandfather dies, the Son may enter upon the Tenant in Dower, for he hath a new right deſcended from the Grandfather, and the Entry of the Grandfather was Congeable upon the Tenant in Dower, ſo ſhall the entry of his Heir. But if the Son had granted a Rent charge, and the Granfather had died, he ſhould hold it charged, and ſhould not be remitted; for the entry was not lawfull upon him, and when a right deſcends from the Grandfather, he ſhall not be remitted.

If the Iſſue in tail procure one to diſſeiſe the Heir in by deſcent, againſt whom the Heir recovers, and dies, the Iſſue ſhall retain; but if he himſelf had recovered againſt the Diſſeiſor, upon a Title in *Being* to him, he ſhall not be remitted. *Quere*, If his Father diſſeiſee dies, and he recovers againſt

gainſt the Heir, or the Diſſeiſor, by a *Formedon*, If he ſhall be remitted; for the wrong was made to the Eſtate tail at that time: And if one hath title to a *Formedon*, and he procures one to out the Tenant, to the intent that he may recover againſt him, and the Stranger outs him, and a Stranger recovers by a *puiſne title* to the *procurer*, and the other recovers againſt him by a *Formedon*, he is remitted.

If two Jointenants have title of Action, where their Entry is taken away, and the one procures a Stranger, *ut ſupra*, againſt whom they two recover, and he who was party dies, the other is remitted to all; but if he which did not procure had firſt died, the other had not been remitted, but to a moity, *Quære?*

If the iſſue in tail within age by Covin commands *A.* to diſſeiſe the Diſcontinuee of his Father, *A.* diſſeiſes him to the uſe of *B.* for life, and after to the uſe of his own right Heirs, *B.* agrees, *A.* dies, *B.* dies, the Heir of *A.* enters, and enfeoffs the Iſſue; he is remitted, becauſe he is now within age.

Tenant in tail levies a Fine, and takes back an Eſtate in fee upon condition, and dies, the Heir enters, and

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is remitted, and after the Proclamations paſs, if that takes away the Remitter, and if the Condition remains? *Quære.*

If two Jointenants are diſſeiſed by the Father of one of them, who dies ſeiſed, and his Son enters, he is remitted to all the land, and his Companion may enter with him: And it is not like where two are diſſeiſed, and a deſcent caſt during the non-age of of one, and he enters, and is remitted to a moity, his Companion ſhall not enter; for the advantage is given him more in reſpect of his perſon than of the land. Neither is it like where Tenant in Tail enfeoffs one daughter, and dies, ſhe being within age, ſhe is remitted, and her Companion ſhall not have advantage of it; for the right was not in them before. Nor where they have a joint Title of *Formedon* by deſcent, and the land deſcends to one only, his Companion peradventure ſhall not take advantage of it, for the Eſtate tale was taken away, but here it was not. But if the Grandfather had diſſeiſed, &c. and the land had deſcended to the Father, and from the Father to him, it will be otherwiſe, for his Companion ſhall not have advantage, for the Entry was taken away before.

If

If the Diſcontinuee makes a Leaſe to the Iſſue in tail and another, with Livery to the other, and after grants the Reverſion to the Iſſue, and the other dies, ſo that the Freehold is caſt upon the Iſſue without his folly, yet he ſhall not be remitted; for he aſſented to the Reverſion upon the Leaſe for life.

A Diſſeiſor dies without Heir, his Wife *enſeint*, the Lord enters, a Son is born, the Diſſeiſee enters upon the Lord: If the Entry had been before the birth, it had been lawfull, and he had been remitted, and the birth after would not have avoided the Remitter: As if the Diſcontinuee makes a gift in tail to one, the Remainder to the Iſſue in tail, if the firſt Donee dies without Iſſue, his Wife *Priviment enſeint*, now the Iſſue in the firſt intail is remitted, and though the iſſue of the ſecond Donee be after born, the Remitter continues; but here the Entry is not till after the birth of the Son, for if a Stranger had *abated*, the Diſſeiſor having Iſſue, or if after *abatement* a Son had been born, the Diſſeiſee could not enter.

A Diſſeiſee releaſeth all Actions to the Diſſeiſor, and dies, and after the Diſſeiſor dies, and his Heir enters and

dies, and the Land diſcends to the Heir of the Diſſeiſee, if he be remitted? Some ſay there can be no Remitter where there is a cauſe of Action, ſo that without his folly he hath not any body againſt whom he may bring his Action, but though he hath no Action here, yet he hath not loſt it by the Law, but by his own Act, and the Right remains, which is the cauſe of his remitter, and in many caſes a Right ſhall remain without an Action, as if there be Tenant for life of a Seignory, and a Tenancy *Eſcheats*, and a Stranger intrudes, Tenant for life dies before Entry, he in Reverſion cannot have any Action, but may enter, as upon the Diſſeiſor, of his Tenant; but if he dies, and his Heir be in by deſcent, there he cannot enter, and yet he hath a Right, and ſhall be remitted upon a Diſcent.

If a *Fem* Tenant in generall tail marries an Infant who aliens and dies, and his Heir enters upon the Feoffee, the Wife re-enters, ſhe is not remitted.

Tenant for life, the remainder in Fee makes a gift in tail, the remainder in Fee, he which had the firſt remainder releaſeth all his Right to the Donee, without ſaying *to his Heirs*, and dies,

dies, the Donee dies without Iſſue, the Heir of him in Remainder enters, if he be remitted?

If the Diſſeiſee takes an Eſtate in Fee from him who had the Land by deſcent, he agrees unto it, and yet if he dies ſeiſed, his Heir ſhall be remitted.

The Iſſue in tail within age having a Title to bring a *Formedon*, accepts from the Diſcontinuee a Bargain and ſale inrolled, he ſhall not be remitted; for he is in by the Statute.

Tenant in tail, the Remainder to his right Heirs, makes a Leaſe to the Iſſue within age, upon Condition to have Fee at full age, during the Term he performs the Condition, he ſhall be remitted; for the Contract was during his Minority. As if an Infant delivers a Deed as an *Eſcrowl*, to be delivered as his Deed when he comes of full Age, and receives the money, yet he ſhall avoid the Deed.

Vide *Releaſe & Condition.*

Rent.

LEſſee for life makes a Leaſe for forty years, rendring a Rent, the Leſſor confirms the Eſtate of the ſecond Leſſee, and then Tenant for life

dies within the term, the Leſſor diſtrains and avows for the Rent, ſome think it is not maintainable.

Lord and Tenant by Homage, Fealty, and Rent, the Lord grants his Homage upon Condition, reſerving the Rent, the Condition is broken, he hath no Remedy for the Arrerages due before.

Tenant in tail diſcontinues in Fee, and takes back an Eſtate in Fee, and grants a Rent Charge in Fee, and dies, the Lord ſeiſeth the *Ward*, the Grantee diſtrains for the Rent, and the Lord makes *Reſcous*, and the Grantee brings an *Aſſize*, ſom e think it is maintainable.

Leſſee for life makes a Leaſe for ten years, rendring a Rent, the Leſſee for years makes a Feofment, he ſhall hold the Land diſcharged of the Rent, though it binds the Leſſee for life; for the rent cannot indure longer than the reverſion; and though he had granted it to a Stranger, yet had it been gone, and ſo it differs from the other, which is not in reſpect of the reverſion. And if a man makes a Leaſe for life, reſerving a rent to the *uſe* of *A.* and Tenant for life ſurrenders, the rent is gone, 1 *Aſſ.* 10. If the Meſne grants the rent of the Tenant, and

the

the Tenancy Eſcheats, the Rent is gone.

A. makes a Leaſe for life, and grants a Rent Charge, out of the reverſion: the Grantee purchaſeth the Eſtate of Tenant for life, who dies, and the Leſſor enters, if the Grantee may diſtrain for all the Arrerages from the time of the Grant?

A Rent is granted to commence after the Death of the Grantee, who dies, if his Wife ſhall be endowed?

The Father dies ſeiſed of a remainder, having two Sons by two *venters*, the Eldeſt Son being Tenant in tail of the particular Eſtate grants a Rent Charge in Fee, and dies without Iſſue; the ſecond Son enters, and an Avowry is made upon him for the whole Charge. If a man hath two Daughters by two *venters*, or by one, he dies, and the Eldeſt grants a Rent Charge, and dies, before Entry into the Land, ſome think the youngeſt ſhall hold all the Moity charged; as if one Jointenant grants a Rent charge and dies, the Survivor ſhall hold all diſcharged.

If Land be deviſed, reſerving a Rent, that is a void reſervation; for the reſervation of the Rent cannot be good; but in reſpect the Reſervor

might take advantage of it by poſſibility; and the Heir cannot have that which the Anceſtor could not; for if a Re-entry be reſerved to the Heir it is void.

If Tenant in tail holds by Rent, and the Donor grants the Services of the Donee, nothing paſſeth, though there be Atturnment; for the Rent cannot paſſe but as a Rent Service; For if there be Lord and Tenant by Rent and Fealty, and the Lord grants the Services ſaving the Fealty, nothing paſſeth; for it muſt paſſe as a Rent Service; for it is granted by the name of Services; for a Rent ſeck, or Rent Charge cannot paſſe by that word. *Quære*, if the ſueing be not void for the Repugnancies, and as a Rent Service it cannot paſſe; for then the Donee ſhould pay one Fealty to the Grantee, and another to the Donor for the reverſion, and ſo the Donor ſhould charge him with two Fealties, which cannot be, no more than the Lord can grant the Moity.

Tenant for life grants a Rent Charge in Fee, and after he and the Leſſor make a Feoffment of all their Land in ſuch a Town where the Land lieth, and make a Letter of Atturny to make Livery, yet the Rent indures but for the

the life of Tenant for life; for it is but a Grant of the Eſtate of Tenant for life, and alſo of him in Reverſion. But if they had made a Feoffment of that Land only, then the Rent ſhould endure for ever; for it is the Feoffment of Tenant for life, and the Confirmation of him in Reverſion. *Quære*, for the Deed is firſt delivered; and after the Livery is made, and the reverſion paſſeth by the delivery of the Deed; for it is an Atturnment of the Tenant for life by the delivery of the Deed.

If a man reſerve a Rent upon a Leaſe for life, he hath not a Fee in it; for his Wife ſhall not be endowed, but if Leſſee for life grants a Rent in Fee, a Fee paſſeth: for by poſſibility it may endure for ever; that is, if the Leſſor confirms it. But if Tenant for life grants a Rent in Fee to the Leſſor, who grants it over, yet he ſhall avoid it after the death of Tenant for life; for it cannot be a Confirmation though it were granted by *Dedimus & Conceſſimus*; for the Grantee had not poſſeſſion of it before, and one and the ſame word at the ſame time cannot amount to a Grant and a Confirmation alſo. And therefore if a Diſſeiſor grants a Rent Charge to the Diſſeiſee,

and he grants it over, and after reenters, he ſhall hold it diſcharged. If Tenant *pur auter vye* grants a Rent Charge in Fee, and after he hath the Reverſion by deſcent, or releaſe, & *Ceſty que vye* dies, he ſhall hold it diſcharged; but if after the Fee was vehe had made a Feoffment, the Feoffee ſhould not have avoided it after the death of *Ceſty que vye.*

A Seignory is granted for years, the Rent being arrear, the Tenant dies, the years expire, the Heir ſhall not be charged as Heir in *Debt*, if the Father did not bind himſelf and his Heirs by expreſſe words, and the Executors ſhall not be charged; for they were not chargeable with it at the death of the Teſtator; for at that time the Grantee could not have had an Action of *Debt* for it; but he muſt have Diſtrained, and ſo the Leſſee is without remedy.

If a Rent be granted to one and his Heirs, and if it be behind, that he ſhall diſtrain for the life of *A.* during the life of *A.* it is a Rent Charge, and after a Rent ſeck, and ſome think that Seiſin of a Rent Charge is ſufficient to have an *Aſſize* for a Rent ſeck. If a Reverſion be granted rendring a Rent. *Quære*, what Rent it is during the par-

particular Eſtate, but after the particular Eſtate be determined, it is a Rent Service. If a Rent be granted out of two Acres, and if it be behind, that he may diſtrain in one, that is but a Rent ſeck; for it is but one Rent which cannot be wholly a Rent Charge; for the other Acre is not charged, and the Diſtreſs is but a penalty. And if a Rent in Fee be granted, and if it be behind two years, that the Grantee may diſtrain, now it is not a Rent ſeck during the two years, but a Rent Charge diſtrainable after the two years. And if a Rent be granted to one, and if it be behind, his Heirs ſhall diſtrain, the diſtreſs is void; for there is not any ſuch perſon *in Rerum natura*, and it ſhall never be a Rent Charge becauſe it was not one at the beginning, but if the diſtreſſe had been limitted to a perſon *in Eſſe*, then it ſhould have been a Rent Charge, as 46 *E.* 3. 18.

If the Lord grants his Seignory, reſerving a Rent, the Seiſin before will not be a ſufficient Seiſin of it. If a Rent be granted to two, and if it be behind, that one may diſtrain, that is a Rent Seck for one Moity, and a Rent Charge for the other Moity, becauſe one hath another benefit than the other. If a Rent be granted for

for life, and by another Deed the Grantor releaſeth all his right in the Rent to the Grantee, and if it be behind, that he and his Heirs ſhall diſtrain, although the Heir ſhall have it by diſtreſſe, as it is adjudged in 8 *H.* 4. 18. yet the Wife ſhall not be endowed; for it is yet but a Rent ſeck, and the diſtreſs but a penalty, and it is no new Rent which commences after the death. For if a Rent be granted for life, and by another Deed the Grantor grants, if the rent be behind he ſhall diſtrain the remainder in Fee, the remainder is void; for he doth not take ſuch an Eſtate which will ſupport a remainder. If a rent be granted out of the Mannor of *D.* and if it be behind he ſhall diſtrain in the Mannor of *S.* the Grantee purchaſeth the Mannor of *S.* yet the rent remains, and if he doth not purchaſe all the Mannor the diſtreſs ſhall remain in the reſt, and yet the penalty was a thing againſt common right.

Tenant in tail makes a Leaſe for forty years, reſerving a rent, and after dies, the Heir ſuffers the Leſſee to continue in two or three years, and then outs him, he hath no remedy for the rent arrear after the death of Tenant in tail, no more than the Leſſee hath for the

the arrears incured after the breach of a Condition, where he hath entred for the breach of the Condition, and it ſeems he ſhall not have an Action of accompt againſt him as Bailiff of the Land.

A rent ſeck is granted for life, and after the Grantor confirms his Eſtate, and if it be behind, that he and his Heirs ſhall diſtrain, it is a rent ſeck ſtil for life, and the Grantee hath the rent charge in Fee in remainder; for he hath not two rents. As if the Lord of a Mannor grants the Homage and Fealty of his Tenants, ſaving the rent, it is a rent ſeck, and ſhall be parcell of the Mannor, now if the Tenant will grant to the Lord, that he and his Heirs ſhall diſtrain for that rent, yet the rent is parcel of the Mannor, and the diſtreſſe but a penalty, but if it were a rent charge, it ſhall not be ſaid parcell of the Mannor, becauſe it ſhall commence but now. If the Lord grants the rent of his Tenant to one for life, ſaving the Seignory, and then grants the Seignory and reverſion of the rent to the Grantee, yet it muſt be a rent ſeck during the life of the Grantee, and after a rent ſervice; for the reverſion of the rent, which was a rent ſervice cannot drown the Freehold

of

of the Rent, which was of another nature, no more can the Reverſion of the Rent Charge drown the Freehold of the Rent Seck in the principal caſe. But in the laſt caſe, if the Grantee had re-granted the Rent Seck to the Grantor, who had the Reverſion, that will operate as a Surrender. *Quære*, what diverſity where the Reverſion comes to the Freehold, or the Freehold to the Reverſion? If a Rent be granted out of two Acres, and if it be behind, that he ſhall diſtrain in one, that is not a Rent Charge in any part; for the diſtreſſe is not limitted out of all the Land. If twenty ſhillings be granted out of the Mannor of *D.* and if it be behind, that he ſhall diſtrain for that twenty Shillings, and another twenty Shillings out of the Mannor of *S.* the firſt twenty ſhillings is but a Rent Seck, and the diſtreſſe a penalty, and the laſt a Rent Charge in the Mannor of *S.* But if one grants a Rent out of the Mannor of *D.* and if it be behind, that he ſhall diſtrain in *D.* and *S.* that is a Rent Charge in the Mannor of *D.* and a penalty in the Mannor of *S.* If a Rent be granted to one for the life of *A.* and after the Grantor grants by another Deed, that he

ſhall

ſhall diſtrain for his life, with a Remainder in Fee, that is a good Remainder, if the firſt Rent be determined, but if the diſtreſſe be appointed for the life of *A.* or *B.* it is otherwiſe; for it is but a penalty, but in the other caſe the Eſtate is given alſo, though it be a penalty during the time of the appointment of the Determination of the firſt Rent. If twenty Shillings is granted out of *D.* and that the Grantee and his Heirs ſhall diſtrain for that twenty Shillings, and other out of the Mannor of *D.* and *S.* For the firſt twenty Shillings it is a Rent Charge in *D.* and a penalty in *S.* and for the other it is a Rent Charge in both. If a Rent be granted out of two Acres, with a diſtreſſe in one, and after the other is recovered by an *Eigne Title*, it ſhall be a Rent Seck, as it was before; for it cannot be now a Rent Charge, if it were a Rent Seck before. If a Rent reſerved upon a Leaſe for life be granted over, and after a recovery is had in *Waſt*, yet the rent remains, as if the Lord grants the rent, reſerving the Homage, the Rent remaines after the *Eſcheat.*

A rent is granted in Fee out of Land in Borough Engliſh, and at common Law the Grantee dies, having two Sons, the Eldeſt ſhall have all; for the rent is intire, and ſo not apportionable, then the Eldeſt, being he is Heir at Common Law ſhall have all, as an *Aſſize* at Common Law is maintainable for a rent granted out of *Ancient Demeſne*, and other Lands, 35 *H.* 6. 4. *p. Aſhton.*

If a rent be granted in Fee, and the Grantee grants it for years, the Grantee hath no remedy if it be denied; for the Election to have an annuity is only given to the firſt Grantee and his Heirs, and the Election runs in privity, which fails in the ſecond Grantee.

If a rent, incident to a reverſion, be granted for years, ſaving the reverſion, the Grantee hath no remedy; for he ſhall not have an Action of *debt*, though the Leaſe out of which the rent iſſued was for years; for there wants privity. If a Leaſe be made to two, *Habendum* the one Acre in Fee, and the other for life, reſerving a rent. *Quere*, how the Leſſor ſhall avow, but his Executors are not aided by the *Statute* of 31 *H.* 8.

If

If a Leaſe be made of two Acres, reſerving a rent for years, and then the reverſion of one Acre is granted, the rent ſhall be apporcioned; for as the contract is made in reſpect of the reverſion, ſo it ſhall be ſevered in reſpect of the reverſion.

A rent charge is granted in tail to the *Uſe* of *A.* and his Heirs, the rent is behind, the Donee dies without Iſſue, *A.* brings an Action of *Debt* for the Arrerages.

If the Parſon and Ordinary grant a rent charge out of the Glebe to the Patron, the Succeſſor ſhall avoid it; for the aſſent of the Patron ought to be expreſſe, and of the Ordinary alſo where the Succeſſor muſt be bound, and it is but implied here, but the beſt way had been to have granted it to *A.* and he to have granted it to the Patron; and in the firſt caſe if the Patron grants it over, that is no full aſſent, but the Succeſſor ſhall avoid it.

If Tenant in tail grants a Rent Charge in Fee, and makes a Leaſe for forty years, and dies, and the Iſſue accepts the Rent, the Grantee ſhall have the Rent during the Leaſe and the life of the Iſſue, although the Leſſee Surrenders. *Quære*, for the reverſion

Reverſion is diſcharged. If Tenant in tail grants a Rent in Fee, and dies, and the Iſſue having a Wife dies before Entry, his Wife is endowed, ſhe ſhall hold it diſcharged. If the Father diſſeiſes the Son, and grants a rent Charge, and the Son endows his Wife *Ex Aſſenſu Patris* in the ſame Land, the Father dies, the Son dies, the Wife enters, ſhe ſhall hold it charged, for ſhe claims from the poſſeſſion charged. And if Tenant in tail grants a rent charge, the Abator ſhall hold it charged. If the Father diſſeiſes the Son, and grants a rent charge in Fee, and makes a Leaſe for years, and the Son confirms the Leaſe, and the Father dies, the rent is gone. So if a man grants a rent in Fee, and makes a Leaſe for years, and grants the reverſion to the King, or to the Grantee, the rent is gone.

If a Leaſe be made of two Acres in one County, rendring a rent, and Livery is made in both ſeverally, yet it is but one rent, though one Acre paſſed by the Livery before the other.

Leſſee for twenty years makes a Leaſe over, and makes a Leaſe of other Land, in which he hath an Eſtate in Fee ſimple for twenty years, reſerving

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a Rent, without Deed, the whole Rent doth iſſue out of the Lands in which he hath an Eſtate in Fee; for being he hath granted all his Right over in the other Land, it cannot be a reſervation out of that.

If a man grants a Rent for life, and after by another Deed grants, that it ſhall be lawfull for the Grantee and his Heirs to diſtrain for the ſame Rent, that ſhall be intended a Rent of the ſame value; for that Rent is determined by the death of the Grantee. As if the King grants to the Mayor and Commonalty of *D.* the ſame Liberties which the Mayor and Commonalty of *London* have, that ſhall be conſtrued Liberties of the ſame nature, If a man grants to me, that whereas he hath made a Leaſe for forty years to *A.* that I ſhall preſent to the Advowſon which the Leſſor hath during the ſame term. If *A.* ſurrenders the Mannor, yet I ſhall preſent; for when my Grant was during the ſame term, that is to be underſtood during the like time.

If the Patron and Ordinary give licenſe to the Parſon to grant a Rent in Fee, if he does it, that will bind the Succeſſor according to the opinion of 7 *H.* 4. 18. But if a Confirmation had

been made to the Grantee before the Grant, that had been void; and the Diverſity is this; for in the firſt caſe there was nothing requiſite but an Aſſent, which may be before the Act is done, and therefore it is ſaid, that if a *Biſhop* makes a Gift in tail by Deed, and the *Dean* and *Chapter* confirm the Deed, *Et omnia quæ in eo ſunt*, according to the uſuall Confirmation in thoſe caſes, and after Livery is made, that was holden by all the Juſtices to be a void Confirmation; for the Aſſent was not but to the Deed, but the Confirmation ought to be after the Eſtate made, and ſo a Diverſity.

If a Rent Seek be granted to *A.* for life, and after it is granted, that he and his Heirs ſhall diſtrain for it during the life of the Grantee, it is ſtill a Rent Seck, though he may diſtrain for it, but the Heir ſhall diſtrain for it and take it by deſcent.

A. makes a Leaſe for life, reſerving a Rent in Fee, and then grants the Reverſion with Atturnment; and reſerves the Rent in Fee, and dies, the Rent is gone; for it is reſerved out of an Eſtate for life only. So if Tenant in tail of a Rent grants it in Fee, that is no diſcontinuance; for it is granted but during the life of the Grantor.

If

If *A.* makes a Leaſe for life, reſerving a Rent, the remainder for life, the Leſſor grants the reverſion to him in Remainder, the firſt Tenant for life atturns, he ſhall not have the Rent; for the Fee ſimple drowns the remainder to ſome purpoſes, but as to this it is in *Eſſe*.

A. grants a Rent Charge in tail, and enfeoffs the Grantee of the Land, who gives in tail, reſerving to him ſo many ſervices as he pays over to the Lord *Paramount*, and dies, the Iſſue ſhall not have a *Formedon* of the Rent, being he hath the Reverſion; for the Land is diſcharged at the time of the Gift in tail, 31 *E.* 3. *Scire fac.*

Leſſee for twenty years makes a Leaſe for ten years, who purchaſeth the Reverſion with Atturnment of the Leſſee, the Executor of the Leſſee for ten years, ſhall not have the reſidue of the term, but the Heir; but he ſhall pay the firſt rent reſerved to the Leſſee for twenty years in nature of a Rent Charge granted by him; for the Term is in *Eſſe* as to that purpoſe, but it ſeems the firſt Leſſee may diſtrain.

If two Parceners are ſeiſed in tail, and one grants a Rent to the other for *Equality* of Partition, ſhe ſhall have an Eſtate tail in the Rent, 2 *H.* 7. 5.

and note that the Eſtate in the Rent ſhall be of the ſame nature of the Eſtate received, and not of the nature of the Eſtate out of which it iſſues. As if there be two Parceners of one Acre in Fee, and of the other in tail, and upon Partition ſhe which hath the Acre in Fee grants a Rent to the other, that Rent ſhall be in tail, and not in Fee, but if ſhe which hath the Acre in tail grants a Rent to the other, that ſhall be in Fee; for if ſhe dies without iſſue, her Heir ſhall have it as long as the other hath iſſue of her body. But if there be four Acres in Fee, and one in tail, and ſhe which hath the four Acres in Fee grants a Rent to the other, that ſhall be in Fee, *Quia ſequitur magis principale.*

If the Lord grants the Rent, ſaving the Seignory, and the Tenant is after diſſeiſed, and atturns, this is void, for it is now a Rent Seck, in which there is no *Attendancy*, but a Charge to the Land. If a man grants a Rent, reſerved upon a Leaſe for life, ſaving the Reverſion, it is a good Rent Seck, if the Tenant atturns. But if there be Leſſee for years, rendring a Rent, and the Rent is granted over, ſaving the Reverſion, that is void; for *debt* cannot lie by the Grantee, and he cannot have any other action.

If

If the Feoffee upon Condition pays twenty ſhillings to the Lord, whenas the Tenure was by Fine, the Feoffor after his Entry for breach of the Condition is bound in a *Replevin*. So if Leſſee for life with Condition to have Fee, and the Leſſor pays more Rent to the Lord than he ought, and after the Condition is performed, the Leſſee is bound in a *Replevin*. So if a Seignory of twenty ſhillings is granted over by Fine, and the Tenant aliens over, and after pays forty ſhillings to the Lord, the Feoffee is bound.

If a Leaſe be made for life, rendring the firſt four years a Roſe, and after a yearly Rent of twenty ſhillings, and the Leſſor grants the Rent of twenty ſhillings to commence after the four years, this Grant is void; for the Roſe and twenty ſhillings are all one Rent, and if the Grant ſhould be good, the Grantor ſhould have the Roſe for four years, whereas before he had the Freehold, and then it is as if one had a Rent in Fee, and grants it over after four years, that Grant is void, otherwiſe of a Rent created *de novo*.

If a man hath a Rent in Fee, and becomes *Tenant by the Curteſie* of the Land, and dies, his Heir ſhall have a *Mortdanceſter* of the Rent, which he

could not have had if his Anceſtor had not died ſeiſed. So if an *Aſſize* be brought againſt the *Pernor* of a Rent, and after the Plaintiffe is nonſuited, the Diſſeiſee of the Rent is chaſed to his Action for the Rent; for the dying ſeiſed takes away his Entry, *viz.* where the *Pernor* had an Eſtate for life in the Tenancy.

Leſſee for twenty yeares makes a Leaſe for ten years, reſerving a rent, and after makes a Leaſe to the ſame Leſſee for ten years, to begin after his firſt Eſtate ended. It ſeems that the firſt Leſſee ſhall have the rent during the firſt ten years, as a rent ſervice, and diſtrain for it; for the laſt ten years are not out of the firſt Leſſee, nor veſted in the other, neither ſhall they, untill the beginning of the Term, and in the mean time he hath but a right or Title to the Term.

If Tenant for life, and he in reverſion grant a rent charge, and the Grantee releaſeth all his right to him in reverſion, if the rent be extinct. *Quære.*

If a Leaſe be made of two Acres, rendring a rent upon Condition to be performed by the Leſſee, that he ſhall have Fee in one Acre, not ſaying in which, and Livery is made of both, the

the Leſſee performs the Condition, what rent the Leſſor ought to have? *Quere*, or if it ſhall be apporcioned, being part of the reverſion to which the rent is appendant is in the Leſſee, and by an Act that had relation: So that it may now be ſaid, that the rent was never reſerved out of that Acre, which ſeems to be of the ſame effect as if there had been a gift made of two Acres, the one in Fee, and the other for years, rendring a rent, in this caſe it ſhall be of one only Acre; for he may diſtrain of common right, and out of the other Acre no remedy until after Seiſin. Alſo in the ſaid caſe if the Leſſor will diſtrain in one Acre, the Leſſee ſhall take his Election, *viz.* he ſhall ſay that he hath Fee in that Acre, and ſo exclude the Leſſor.

The Son makes a Leaſe to the Father for life, who makes a Leaſe to *A.* for life, the remainder in Fee to the Son, the Son grants a rent charge out of the remainder, and releaſeth to *A.* in Fee, the Father and *A.* die, if his Iſſue ſhall hold it charged? First, it ſeems that the right Fee is deveſted, and a tortious veſted all in the ſame Inſtant. As if Tenant in tail makes a Leaſe for life, &c. or the Husband makes a Leaſe for life of the Wives

Land, &c. then in the first case, the Rent being granted out of the Reversion, it is the same as if it had been granted out of the Remainder; for they differ not in substance. And when the Son releaseth to A. and his Heirs all his Right; that doth not inure as an Entry and Feoffment, because *A.* was in by Title, without Disseisin, then that doth not give unto him the remainder, as if he had released all his Estate in the Land, or all his right, *Habendum* the Land in Fee, but here he had the right and the Estate, and then a Release of right doth not inure to the Estate, then if the release doth not perfect the remainder, if the Grant of the rent, which is an assent to the remainder, doth so inseperably unite the remainder and the Rent, that the right shall be drownd in the Estate for the preservation of the Rent? and some think not; for if the Disseisee takes an Estate in Fee from him who hath the Land by Descent, he agrees to it, and yet if he dies his Heir shall be remitted, and so the rent charge avoided. But others think that being by the Grant of the rent charge he hath agreed to the remainder, and so to the Livery, he cannot after enter upon the Tenant for life, and then

the release gives the remainder, and so the Land is charged.

Where a Woman shall be endowed of a rent; vide *Dower*.

If a rent seck be granted, and after it is granted that he may distrain in the same Land, and after the Grantee brings a writ of Annuity, if he may distrain after. *Quære, viz.* if there be one or two rents?

A rent charge is granted out of two Acres, the Tenant of the Land conveys away one, the Grantee of the rent may distrain in one or the other; But if one Tenant pay the rent, if the other be distrained he may plead payment by his Companion.

A *Feme* hath a rent seck and marries, the Tenant grants to the Husband, that he and his Heirs may distrain for the rent, the Husband & wife die without Issue, the distress is extinct; for the Heirs of the Husband are only privy to distrain, and they cannot distrain for a rent due to another. But if a man hath a rent on the part of his mother, and he Tenant grants that he & his Heirs may distrain for the rent, and he dies without Issue, there the distress shall go to the Heirs on the part of his Mother, and if they grant the rent to a stranger he may distrain. But if the Tenant grants

to

to the Lord of the Mannor that he shall distrain, *ut supra*, and he aliens the mannor, the Alience shall not distrain out of the Mannor, and in that case the penalty of the distresse is gone, but in the other case, the Grant being of a distresse in the same place out of which the rent issues, this is now a rent charge, and by consequence the distresse shall passe to the Grantee: but if the Grant of the distresse had been in another place, then it had been but a penalty, and could not have gone to the Heir on the part of the Mother, nor to the Assignee of the same rent, and therefore the penalty being severed from the principall by Act in Law, or in Deed, the penalty shall cease.

Vide *Parceners*, *Lease*, *Atturnment*.

Reservation.

IF a rent be reserved to the Lessor, he shall have it but during his life; for it was not reserved longer. And if it had been reserved during forty years he should have had it no longer. But if the rent had been reserved generally, and not expressed to whom, that shall be to the Lessor and his Heirs; for the Law will direct it. If Lessee for twenty years makes a Lease for ten

years, reſerving a rent to him, his Executors ſhall have it; for they repreſent the perſon of the Teſtator.

If a Gift in tail be made reſerving, during the life of the Donor a Socage Tenure, and after *Knights Service*, that is a good reſervation, and it ſhall be according to the words, and his Wife ſhall be endowed of the *Knight Service*.

If a Leaſe for life be made, rendring a rent for the firſt ſeven years, he ſhall have an Aſſize for it; for it is adjudged in 7 E. 3. 10. That an Action of *Debt* will not lie for the rent. *Dy.* 23. *a. Spilman cont.*

Although *Littleton* ſaith a man cannot reſerve a rent but to the Leſſor or his Heirs, yet if a man makes a Leaſe, rendring a rent to his Heir, that is a void reſervation; for his Heir ſhall take as a purchaſe, and is as a Stranger. But *Littleton* is to be underſtood ſo, that the *Disjunctive* muſt be taken for a *Copulative*.

If a Feoffment be made of a Manor, reſerving to the Feoffor an Acre for twenty years, the Feoffor hath a Fee in it, and nothing paſſeth of it; for it cannot paſſe by the Livery, and he cannot paſſe it to himſelf, or reſerve it for a certain time; for then he

ſhould

ſhould have a leaſe for years without a Leſſor, which cannot be.

If a *Dean and Chapter* make a leaſe, reſerving a rent to them, their Succeſſor ſhall have it becauſe they never die.

If a man upon a Gift in tail reſerve Socage tenure the firſt ten years, and after Knights ſervice, within the ten years the Donee dies, his heir within age, if he ſhall be in Ward during the firſt ten years, or after, if they expire during his Nonage?

If a Feoffment be made of a Manor, reſerving one Acre, that is a good reſervation; but if a Feoffment be made of twenty Acres, reſerving one Acre, that is void. If a leaſe be made of land and wood for life, rendring twenty ſhillings rent, *viz.* ten ſhillings for the land, and ten ſhillings for the wood, the rents are made ſeverall.

If there be Lord and Tenant by Fealty and twenty ſhillings rent, and the Tenant makes a Gift in *Franck-marriage* to hold of him by Fealty only, untill the fourth degree be paſt, and after that by twenty ſhillings, and Knight Service, in that caſe, after the four degrees he ſhall neither have the twenty ſhillings, nor the

the Knight Service; for though he reſerved but Fealty until the four degrees were paſt, yet it is an intire reſervation preſently, and the Services be in him although they be not to be performed untill the four degrees be paſt, and ſeiſin of Fealty ſhall be a Seiſin of the remnant, wherefore being the Reverſion is intire, that is the reaſon that it is void. For all cannot be reſerved upon the gift in *Frankmarriage.*

If a man makes a Leaſe to two, *Habendum* the one Moity to one, the other to the other, reſerving one *Hauk*, or a Leaſe *pur auter vye* to *A.* and a *Dean and Chapter*, reſerving one Hauk, or if the Land the beginning goeth two ſeverall ways, and but one *Hauk* is reſerved, he ſhall have no more.

Reverſion.

IF one Acre be given in tail, which is holden in Socage, and another Acre which is holden in Chivalry, ſaying nothing, the Donor ſhall have ſeverall ſervices, and make ſeverall Avowries, though he hath an intire Reverſion; for the Law makes the Avowries in reſpect of the Tenure over;

over; and he holds the reverſion of one Acre of one, and of the other Acre of another, and they ſhall Eſcheat ſeverally.

If a Reverſion be granted to Tenant for life and a ſtranger in Fee, the Jointure of the Fee is ſevered; for the Tenant for life hath a Fee ſimple in the moity veſted preſently, but if the Reverſion had been granted to Tenant in tail and a ſtranger, there the Jointure remains. But if the Husband be Tenant for life, and the reverſion be granted to him and his wife, the Fee remains in Jointure; for there is no moities between them.

A Leaſe is made for the lives of *A.* and *B.* the Leſſee makes a Leaſe for the life of *A.* only, he hath the reverſion notwithſtanding the Leaſe; for he hath given a leſſer Eſtate than he had, if the ſecond Leſſee dies, living *A.* an Occupant ſhall have it, but others think the contrary; for he had not before but one Freehold, and by the Leaſe to the ſecond Leſſee he hath departed with the Freehold, and the reverſion of the ſame Freehold cannot be in him. But if a Leaſe is made to me for the life of *A.* the remainder to me for the life of *B.* and I make a Leaſe for the life of *A.* only, I have a Reverſion

verſion for the life of *B.* for they were two Eſtates, but here was but one Eſtate, and all that Grant was irrecoverable if *A.* ſurvived, then the poſſibility of the ſurviving of *A.* doth not make a reverſion in the firſt Leſſee. But it is as if I am Leſſee for the life of *C.* and I grant my Eſtate upon Condition, that if *D.* dies, living *C.* that I ſhall re-enter. I have no Reverſion notwithſtanding this Condition; for if the Condition be ſufficient for me to enter upon an Occupant. *Quære.*

If the Baſtard endows the wife of the common Anceſtor. *Quære*, in whom the reverſion ſhall be?

If Tenant for life ſurrenders upon Condition, and the Leſſor marries, and dies, and the Wife is endowed againſt the Heir, and after Tenant for life enters for breach of the Condition, and not by the Wife, and no default in the Heir, yet the Wife ſhall not have the reverſion of the Land after the death of Tenant for life: for the Freehold which was the cauſe of her Dower was taken away by an Elder Title.

If a Leaſe be made for life, reſerving a Rent, and the reverſion is granted to the Leſſee for his own life, the Grant is void, and he ſhall pay the Rent;

rent; but if the grant of the Reverſion to another for the life of the Leſſee, that had been good; for he ſhall have the rent and take a Surrender without Livery.

A leaſe is made to *A.* and *B.* for their lives, and after the Reverſion is granted to *C.* during the lives of *A.* and *B.* they make partition and *A.* dies; the Queſtion is, if the firſt Leſſor ſhall have his part after his death, or *C.*? ſome think the Grant of the reverſion was good; for if the Tenant for life had entred into Religion *C.* ſhould have the Land, *Quære, of this forreign Intendment*; but if the Reverſion doth paſſe, the Rent ſhall paſſe as a Rent Service. And if the firſt Eſtate had been upon Condition, to ceaſe, *C.* ſhould have had it during their lives, then it ſeems the Partition ſevers the Reverſion; for, though by the firſt Grant he was intitled to have the Reverſion ſo long as either of them lived, that was in reſpect of the Jointure, and when that is ſevered, ſo is the reverſion, ſo that the firſt Leſſor ſhall have it after the death of Tenant for life, and not *C.* *Quære?* If a Leaſe be made for twenty years, rendring a Rent, and the reverſion is granted for ten years, that is a good Grant, and he ſhall diſtrain

diſtrain for the Rent, *Quod nota.*

If Husband and Wife accept a Fine, *Sur conuſans de Droit come ceo*, &c. of the Wives Land from *B.* and they render it to him in tail, yet the Reverſion is in the wife only; for the Husband had nothing but by reaſon of the Coverture.

If the Donor confirm the Eſtate of the Donee in tail, that is a Grant of the Reverſion in Law.

A Recovery is had againſt Tenant for life upon a falſe Oath, he in Reverſion dies without Heir, Tenant for life brings an Attaint, and reverſeth the Judgement: To whom the Reverſion is recovered, is the Queſtion?

Vide *Remainder.*

Reviver.

IF the Tenant makes a Leaſe for years to the Lord, and he makes a Leaſe for life, and the Tenant enters, the Seignory is revived after the death of the Tenant for life, notwithſtanding there was a Diſſeiſin, and the Lord was the Diſſeiſor by the Statute.

If the Tenant enfeoffs the Lord upon Condition, and enters for the Condition broken, the Seignory is

revived. But if the Lord grants his Seignory in Fee to one who hath the Tenancy with a Condition, and after the Feoffor enters for the Condition broken before or after, the Seignory is gone in both cases.

If the Lessor recovers in *Waſt* againſt the Leſſee for life, who comes to the Seignory after the Waſt committed, the Seignory ſhall be revived: but otherwiſe if Waſt had been made after the Seiguory accrued.

If after a Diſſent the Diſſeiſor comes to the poſſeſſion again, the Entry of the Diſſeiſee is revived. If a Baſtard dies ſeiſed, leaving Iſſue, who endows his mother, the *Mulier* may enter; for the Wife is endowed by an *Eign Title*, and ſo the right is revived. If a Diſſeiſee enters upon a Diſſent, and dies ſeiſed, and the Heir endows his Mother, the Entry of him who was in by Deſcent is revived.

If the Tenant enfeoffs the Heir of the Lord upon Condition, the Lord dies, the Condition is broken, the Seignory is revived.

If the Grantee of a Rent Charge in Fee grants to one, that if he pays to him or his Executors twenty Shillings by ſuch a day, that he ſhall have Rent in Fee, the Grantee dies without Heir,

Heir, the ſecond Grantee pays the money to the Executors according to the appointment, the Rent is revived.

A. having Common *Sans number* in tail in two Acres, purchaſeth one Acre, and then hath Iſſue, and dies; ſo that the Common in one Acre deſdeſcends to the ſame Iſſue, if the Common ſhall be revived in the other? If the Iſſue had recovered one Acre againſt the Grantor by a Title before the Grant, there it ſhall remain in the other Acre; for then it is as if but one Acre had been charged at the firſt; but upon a Diſſent there can be no apporcionment; for it is gone and ſuſpended for all, or revived in the reſidue for all; for Common without Number is intire, and cannot be ſevered, but Common certain may be apporcioned upon a Diſſent.

If the Lord diſſeiſes his Tenant, and is diſſeiſed, and the Tenant enters, the Seignory is revived.

If Tenant for life aliens in Fee to the Grantee of a Rent in Fee by his Leſſor, and the Leſſor enters for a forfeiture, the Rent is revived.

Seisin.

LOrd and Tenant, the Lord having a Son dies, the Tenant makes a Feoffment, the Son hath Seisin of the Rent by the hands of the Feoffee; if this Seisin be sufficient for the Son to maintain an *Assize* against his Disseisor after?

Severance of the Jointure.

IF Two Jointenants make a Lease for life, and after one grants his part to a stranger for the life of the Lessee, some think it is a severance of the Jointure.

If two Women Jointenants be *Mesnes*, and one of them marries the Tenant, the Moity of the Mesnalty is suspended, and the Jointure severed.

Vide *Jointenants.*

Statutes.

THe Husband is bound in a Statute Merchant, & after he and the Wife levy a Fine of the land of the wife to *A.* the Husband dies, the Statute shall not be extended in the hands of *A.* for nothing

thing paſſed from the Husband but the Eſtate which he had during the Coverture, which is determined by his death; and *A.* ſhall have the ſame benefit which the Heir of *A.* ſhould have had, or as he ſhould have if the Wife had been diſcovert, and had granted it; for it is lawfull for a *Fem covert* to grant her Eſtate by Fine, and then it would be againſt reaſon, that the Grantee of the Wife ſhould not have it with the ſame advantages which the Wife ſhould have. But if the Land had been in Execution, then it had been unavoidable, becauſe it had been executed. If Tenant for life and he in reverſion levy a Fine, it ſhall be lyable to the ſtatute of Tenant for life during his life only, and never ſhall be lyable to the Statute of him in reverſion; for though the words of the Fine be joint, yet he may avoid it by ſhewing the truth of the matter. So in the principall caſe he may ſhew that the Eſtate of the Husband was during the Coverture only.

If the Grantee of a Rent Charge dies without Heir, the Land ſhall be bound with a Statute Merchant entred into by him; for though it be determined, yet the determination ſhall not have relation; for if the tenant be bound

in a ſtatute, and dies without Heir, it ſhall be extended againſt the Lord by Eſcheat. And if one manumits a Villain, a Statute in which he was bound ſhall be executed upon him, if the Writ of Execution did iſſue out againſt him before.

Land whereof a man hath onely Seiſin in Law ſhall be lyable to a Statute.

The Coniſor of a Statute is in Execution and his Land alſo, the Coniſee releaſeth to him all his Debts, the Execution it diſcharged; for the Debt remains untill it be levied of the profits.

If the Son be Tenant in tail, the remainder to the Father in Fee, the Father is bound in a Statute, and dies, and the remainder deſcends upon the Son, he aliens in Fee, or ſuffers a Common recovery, the Land is lyable to the Execution preſently. As if the Lord had recovered in a *Ceſſavit* againſt Tenant in tail with a remainder over, being charged, the Land in the Lords hand ſhall be lyable to the Statute of him in Remainder preſently, as it ſhall be to the Grant of a Rent by him, though as a remainder it was not lyable.

Surrender.

Surrender.

LEſſee for forty years makes a Leaſe for ten years, rendring a Rent, the firſt Leſſee ſurrenders, and the Leſſor brings *Debt* againſt the ſecond Leſſee. *Quære.*

If Leſſee for years makes livery, as Atturny to the leſſor, it was ruled in 34 *Eliz.* in *C B.* to be no ſurrender.

Tenant for life cannot ſurrender to him in Remainder for years; for he hath a Freehold in poſſeſſion, which cannot drown in a Chattle.

If a leaſe be made to commence at Eaſter, and before Eaſter the leſſee takes another leaſe to begin preſently, If that be a Surrender? Some think it is.

A leaſe is made for ten years, and after another leaſe is made to begin after the firſt leaſe determined, the firſt leſſee Surrenders, the ſecond leſſee may enter, otherwiſe if the Reverſion had been granted for ten years.

A leſſee cannot make an Actual ſurrender before Entry.

If a leaſe be made for years, the remainder for years, the remainder to

the firſt Leſſee in Fee, he in remainder may ſurrender to him, and yet he hath nothing in poſſeſſion. So if there be leſſee for years, the remainder for years and the Fee deſcends to the firſt Termor, he in remainder may ſurrender

If *A.* makes a Leaſe for years to *B.* to begin at *Michaelmas*, and before the day he enfeoffs *B.* *B.* dies before the day, and his Son enters, if the Executor may enter upon the Heir is the queſtion?

Tail.

A. dies leaving Iſſue, two Daughters, Land is given by Deed in tail to the youngeſt, and to the Heirs of the body of the Father begotten, and ſhe hath Iſſue and dies, and the Iſſue brings a *Formedon* againſt the Eldeſt Daughter: the queſtion is what Eſtate the Daughter took?

Tenant in tail in *Uſe*, the remainder unto his right Heirs, enters upon the Feoffees, and makes a Feoffment, and takes back an Eſtate in tail, the remainder to his right Heirs, and after the *Stat.* of 27 *H.* 8. is made, and he dies, how the Iſſue may avoid the ſecond Eſtate tail, and take the firſt is the

the queſtion? It ſeems he cannot take the firſt Eſtate in Tail by no means; for when he entered upon the Feoffees, and made a Feoffment, then the remainder in Fee was not in him, yet by his Feoffment a Fee ſimple paſſed not determinable by his death, but defeaſible by the Entry of the Feoffees, then the Fee ſimple muſt needs paſs being he had the *Uſe* to his right Heirs, then when the *Stat.* of 27 *H.* 8. was made, the *Uſe* not being in *Eſſe*, but the right of an *Uſe*, the poſſeſſion is executed according to the right of the *Uſe*, and then when he dies there is no Remitter to the Eſtate; for that was not in *Eſſe*.

A Gift in tail is made with *Warranty* accordingly, the Donee releaſeth the Warranty to the Donor, and after the reverſion is granted, and the Donee atturns. If the Iſſue in tail be impleaded he ſhall not vouch; for the releaſe hath extinguiſhed the *Warranty* for ever; for the Statute ſpeaks of Tenements, and a *Warranty* is no Tenement, but a Covenant reall which is extinguiſhed by the Releaſe, As if an Annuity be granted in tail, a Releaſe of the Donor extinguiſheth it.

If Tenant in tail makes a Leaſe to begin at Eaſter, reſerving a Rent, and

and dies, and the Iſſue in tail enters, and makes a Feoffment before Eaſter, the Feoffee cannot avoid the leaſe; for the leaſe was not avoided by the Entry of the Iſſue.

A leaſe is made for years, the remainder in tail, he in Remainder grants it over in Fee, the Leſſee atturns, the years expire, the Grantee enters, and dies ſeiſed, Tenant in tail dies, his Iſſue may enter; for the Grant was not but for the life of Tenant in tail, and then he did not die ſeiſed in Fee, & if the dying ſeiſed had been after the death of Tenant in tail, it ſhould not have taken away his Entry. *Tamen Quære.* But if the Iſſue of the Iſſue of the Grantee had entered, and died ſeiſed, there his Entry had been taken away, and if Tenant in tail enfeoffs the Donor, who dies ſeiſed; by moſt, that Diſſent will take away the Entry of the Iſſue.

Tenant in tail makes a Feoffment, and dies, the Feoffee makes a leaſe for life, and grants the Reverſion to the Iſſue, he ſhall not have a *Formedon* againſt Tenant for life; for he hath aſſented to the reverſion. But if Tenant in tail makes a leaſe, *Pur auter vye*, and dies notwithſtanding the Diſſent in Fee of the reverſion, the Iſſue ſhall have

have a *Formedon*; for the Reverſion is waived by uſing the Action.

If Donee in tail to him and his Heirs males, the Remainder to him and the Heirs Females of his body, makes a Leaſe for years, reſerving a Rent, and dies without Iſſue Males, if the Heir Female accepts the Rent ſhe ſhall be bound; for the Leaſe was derived out of both their Eſtates, and ſhe comes in by deſcent, but if the Heir male had made a Leaſe and died without Iſſue, the Heir Female cannot make that good by acceptance.

If Tenant in tail of a Seignory, to which a Villain is regardant, makes a Leaſe to the Villain for one and twenty years, according to the Statute, and dies within the Term: If the Iſſue being Remitted to the Freehold of his Villain may enter into the Mannor, and out the Villain?

Tenant in tail of a Seignory purchaſeth the Tenancy, and before the *Stat.* of *Quia empto* makes a Feoffment thereof, reſerving a new Rent and dies, having Iſſue, the Iſſue of neceſſity ought to have the laſt Seignory; for that ſuſpends the firſt. As if the Lord being Tenant in tail purchaſeth the Meſnalty in Fee, the Iſſue of him in whom both are ſuſpended) cannot

diſtrain

diſtrain for the Rent of the Seignory, and chooſe to have that by deſcent; for the Meſnalty by deſcent caſt upon him is not waivable; for notwithſtanding any act that he can do to wave it, yet the Freehold & Fee remains in him before which another hath that by *Pernancy*, but it ſeems if any takes it before the Iſſue makes an Act to ſhew that he will diſcent to it, then he may diſtrain for the Seignory. As if Tenant in tail of a Seignory purchaſeth the Tenancy and dies, the Iſſue may diſtrain if another enters into the Land before him, but if he enters, and after another enters upon him, he cannot diſtrain after.

Tenant in tail, the remainder to his own right Heirs, makes a Leaſe to the Iſſue within age, upon Condition to have Fee, and at full age, during the Term he performs the Condition, and after grants a Rent Charge, and the Grantee is ſeiſed, and diſſeiſed, and brings an *Aſſize*, and pending that Tenant in tail dies, the *Aſſize* is now abated by the Remitter, though the performance of the Condition was at full age; for the contract was during the Minority, which is the ground, and the Iſſue ſhall avoid the charge.

The

The Donor diſſeiſeth Tenant in tail and dies, Tenant in tail and the Heir, who is in by deſcent make a Leaſe to the Iſſue within age for life, the remainder in Fee: Tenant in tail dies, although the Iſſue be remitted, yet the Remainder is good; for it was once executed, and the remitter comes after.

Tenants in Common.

IF the Reverſion be granted to Tenant for life and a Stranger in Fee, the Jointure is ſevered; for the Tenant for life hath the Feeſimple in the Moity executed preſently. But if the reverſion be granted to Tenant in tail and another in Fee, the Jointure in the Eee remains, but if the Husband be Tenant for life, and the reverſion is granted to him and his wife, the Fee remains in them in Jointure; for there are no Moities between them. If a Leaſe be made to two, *Habendum* the one Moity to one, and the other moity to the other for life, and after a Confirmation is made to them and their Heirs, the Jointure of the Fee is ſevered, and they are Tenants in common thereof as they were of the Frehold; for a confirmation inures according to the nature of the eſtate

eſtate on which it inures, and doth not alter the Eſtate, 9*H.*6.9. But if the Reverſion had been granted to them in Fee they had been Jointenants of the Fee preſently; for their Fee in Jointure drowns their ſeverall Eſtates of Freehold. But if there be Tenants in Common for life, and two Jointenants of the Reverſion, and one of them purchaſeth of one Tenant for life his Eſtate, and the other of the other, the Jointure is ſevered; for when one of them purchaſed the Eſtate of one Tenant for life, he had the Moity of the Fee executed to the Moity of the Freehold, and by that the Jointure was preſently ſevered, but in the other caſe they come to the Reverſion at one inſtant, and that is the diverſity. Land is given to *Baron & Fem, Habendum* the one moity to the Husband, the other moity to the Wife, and after the Land is confirm'd to them in ſpeciall tail, reſerving a Hauk, the Donor ſhall have two Hauks, for the Husband had the one moity of the Inheritance, becauſe his poſſeſſion was ſevered from the poſſeſſion of his Wife, ſo that of that Moity the Husband is ſeiſed in his own right in ſpeciall tail, and the Wife hath nothing in it. Then of the other moity whereof the

the Wife was Tenant in Common with her Husband, the Husband is ſeiſed in right of his Wife, which is a ſufficient Eſtate, whereupon a Confirmation may inure. If Land be given to the Husband for life, the remainder to the Wife for life, and their Eſtates are confirmed in tail, the Husband ſhall have one moity in tail only, and he and his Wife the other moity: and yet the Eſtate tail is not executed for any part. *Quære*, for it is a good moot caſe. If Land be given to two, and the Heirs of their bodies begotten, and the Donor confirms the Land to them in Fee, they are not Jointenants of the Fee: for the Eſtate tail was executed to ſuch purpoſe, and ſo the confirmation inures ſeverally. If Tenant *pur auter vye* be of a Tenancy, and the Seignory is granted to him and another in Fee, the Jointure is ſevered preſently, and if *Ceſty que vye* dies, yet the Seignory is not in Jointure; for it was ſo at the firſt. But if a Seignory is granted to two in Fee, and after one accepts the Tenancy, *pur auter vye*, and *Ceſty que vye* dies, now the Jointure remains, becauſe it was Joint at the beginning.

If Land be given to *A.* and a *Dean and Chapter*, and his Succeſſors, and Livery

Livery is made to *A.* in the name of both, nothing veſts in the *Dean* becauſe they take it ſeverally, and in common, by reaſon of their ſeverall capacities, and ſo no privity between them; for a Releaſe to one Tenant in common will not inure to his Companion, but if the Diſcontinuee in tail enfeoffs the Iſſue in tail within age and another, and makes Livery to the Infant in both their names, though the Infant ſhall be remitted for a moity, yet the other takes a moity, and they ſhall be Tenants in common; for their capacities are not ſeverall, but they take ſeverally by operation of the Law; for firſt it veſts, and then he is remitted.

Tenant by the Curteſie.

IF there be Tenant by the Curteſie of an Advowſon, and he in reverſion is preſented by a Stranger, his Heir ſhall not avoid it; for it was during the life of Tenant by the Curteſie, and he ſhall not be ſaid to be Tenant for life, and the ſtranger has gained the Patronage, and he was not but an Atturny to convey it to him.

If

If the Tenant marries the Seignoreſſe, or the Seignoreſſe takes an Eſtate for life of the Tenancy, and after marries, the Husband ſhall not be Tenant by the Curteſie; for the Freehold of the Tenancy was in ſuſpence, and then he could not be Tenant by the Curteſie of ſuch a Reverſion. But if ſhe had taken an Eſtate for years, or the Tenant had been her Ward, and after ſhe had married, and died, during that Eſtate he ſhall be Tenant by the Curteſie; for the Freehold was not in ſuſpence, but the poſſeſſion for years only.

Land is given to two Women *Quam diu ſimul vixerint*, the remainder to the right Heirs of her who firſt dies, one of them takes Husband, hath Iſſue, and dies, the Husband ſhall not be Tenant by the Curteſie; for ſhe had not the ſole poſſeſſion.

Tenant by the Curteſie of a Seignory, and a Tenancy Eſcheats, and he makes a Feoffment with *Warranty* of it. If that ſhall be a bar to the Iſſue without Aſſetts? is the Queſtion.

If one hath a Son which is a Baſtard *Eign*, and a Daughter *Mulier Puiſne*, and dies ſeiſed of a Rent, the Daughter having a Husband, and after the Baſtard gets the Rent, and thereof

dies ſeiſed, and that deſcends unto his Iſſue, yet the Husband ſhall be Tenant by the Curteſie; for the Rent was in *Eſſe* (at the time of the Diſcent) in the Daughter, and ſhe may chooſe whether or no ſhe will admit her ſelf out of poſſeſſion.

Tenures.

IF there be Lord, Meſne, and Tenant, the Tenant holds by four pence, and the Meſne by twelve pence, and the Tenant makes a Gift in tail, ſaying nothing, and the Reverſion Eſcheats after that, ſome think the Donee ſhall hold by twelve pence, ſo if the Meſnalty deſcends to the Donor, the Donee ſhall hold by twelve pence, and if the Meſne had releaſed to the Donor, the Donee ſhall hold by twelve pence. As if the Tenant had made a gift in tail, the remainder in fee, and the remainder had eſcheated, the Donee ſhall hold by twelve pence; for the firſt Services which he paid, and the firſt Tenure is extinct by the unity of the remainder to the Seignory, ſo it is cleer the Meſnalty is extinct, *viz.* the four pence, then the Donee ſhall hold by twelve pence, and it is all one as if the Meſne had releaſed to him in remainder, and the reaſon

reaſon in the principall caſe why the Tenure of the Donee ſhall be charged, is, becauſe the Law makes the Tenure of the Donor in reſpect of the Meſnalty, and when the Meſnalty is extinct, the Tenure between the Donor and the Donee is extinct alſo, and then by the ſame reaſon that the Donee ſhall take advantage, if the Donor by releaſe or Diſſent had held by leſſer Services, he ſhall be prejudiced when he holds by greater Services. And ſome think if the Wife of the Donee in tail, of which the Law makes the Tenure be endowed, and after the Eſtate is extinct, ſhe ſhall hold by Fealty only, otherwiſe if the Tenure had been reſerved by expreſſe words, and if the Wife of the Tenant be endowed, and after the reverſion Eſcheats, the Wife ſhall hold by Fealty only. If the Tenant who holds by four pence, makes a Gift in Frankmarriage, and after the Donor dies without Heirs, ſo that the reverſion is held by twelve pence, *Quære*, how the Donees ſhall hold? whether by ſuch ſervices as the Donor held when the Gift was made? or by ſuch as the reverſion is now held by? If a Gift in *Frankmarriage* be made, the Donees (after the fourth degree) ſhall hold as the Donor holds over. If

a Gift in tail be made, rendring two pence during the life of the Father of the Donee, during his life the Iſſue ſhall hold by the Reſervation of the party, and after his death by reſervation of the Law. If an Encroachment of Services be made upon the Husband, the wife endow'd ſhall not be contributory, and yet the Heir ſhall not avoid it.

A man hath iſſue two Daughters, and holds Land of the Eldeſt by Suit and a Hawk, and dies, the Daughters aſſign a third part to the mother in Dower, and after make Partition. Tenant in Dower ſhall not be contributory for any part of the Services; for the reverſion remains in Parcenary between them; for they cannot make partition thereof, and then the whole Seignory is in ſuſpence. And yet if Land holden by a Hawk deſcend upon the Seignoreſſe and her ſiſter, and they make Partition, the Seignoreſſe ſhall have the Hawk, but there is no Suit; for by the Statute of *Marlebr. cap.* 9. the Eldeſt ſhall perform it, and the other ſhall be contributory, then if ſhe be Seignoreſs ſhe cannot do it her ſelf. But the reaſon in the principal caſe why the yonngeſt ſhall not be charged, is, becauſe the Seignory is in ſuſpence, & it cannot be in *Eſſe* for another parcel.

The

The Tenancy, being a Mannor, is holden by twelve pence of another Mannor, which is the Meſnalty, and holden by ſix pence, and the Meſne enfeoffs the Tenant of the Mannor, which is the Meſnalty, now he ſhall hold both the Mannors of the Lord by one Joint tenure of ſix pence, and the Lord ſhall avow upon the Tenant, becauſe the two Mannors are holden of him by ſix pence, ſo had it been if the Tenancy had eſcheated to the Meſnalty, and the one Mannor is parcel of the other, there the Tenancy hath not loſt the name of a Mannor; for the Land which was held of the Tenancy is not held of another Mannor which was the Meſnalty, but as it was before, 39 *H.* 6. 9. *b.* where one Mannor may be parcel of another.

If the Tenant who holds by one Hauk makes a Feofment of a Moity to a ſtranger, or of the whole to a Mayor and Commonalty and *A.* now the Lord *Paramount* ſhall have two Hawks; for they are ſeverall Feofments; for if livery had bin made to one in the name of both, nothing paſſeth but to him who took the Livery, and the Lord ſhall be compell'd to make ſeveral Avouries, which proves that he ſhall have ſeverall Hawks. If the Tenant who holds

by two ſeverall Hawks makes a Gift in tail to two ſeveral perſons, reſerving a Rent, *Habendum* the one Moity to one, and the other Moity to the other, ſo that they have ſeverall Eſtates in tail, the Donor ſhall have two Hawks; for the Law makes the Tenure, and reſervation, but if the party had reſerved it by ſpecial words, As if a man makes a Leaſe, *Habendum* one Moity to one, the other Moity to the other, reſerving one Hawk, or makes a Leaſe, *Pur auter vye*, to *A.* and to a *Dean and Chapter*, reſerving one Hawk, and the Land goes two ſeverall ways, and he does reſerve but one Hawk, he ſhall not have more than he reſerved.

If a Reverſion at the beginning goes ſeverall ways, yet they ſhall not have more than is reſerved, if it were ſpecial reſervation by the party.

Land is given to two, and to the Heirs of their two bodies begotten, the remainder to their right Heirs, and the Land before was holden by one Hawk, the Lord ſhall now have but one Hawk, and yet they are not Jointenants of the Fee ſimple, but there is no apporcionment by Moities, but if a Leaſe be made for life of two Acres, the remainder in Fee of one to

A.

A. and of the other to *B.* there he ſhall have two Hawks.

Lord, Meſne, and Tenant, the Tenant makes a Gift in tail, the remainder in Fee, the remainder Eſchears, upon whom the Lord ſhall avow, and of whom the Donee ſhall hold is the queſtion? So if the Tenant makes a Gift in tail to the Meſne, the remainder in Fee, or makes a Gift in tail to a ſtranger, the remainder in Fee to the Meſne, how the Tenure ſhall be now is the Queſtion? But in the firſt caſe, if the Meſne had releaſed to him in remainder, or to the Donee in tail, it ſeems the Donee ought to avow upon the Donee in tail, and that the Donee ſhall hold immediately of the Lord *Paramount* after the releaſe. *Quære*, if there be any difference?

The Tenant who holds by Homage and ten ſhillings Rent, makes a Leaſe for life, the remainder in tail, not ſpeaking of any reſervation, the Tenant for life (although he doth not hold by Homage) yet he ſhall hold by Fealty and ten ſhillings Rent, being both the Eſtates, now are but one: But a Gift had been made in tail, the remainder for life, after the Eſtate tail determined, the Tenant for life

ſhall not hold by the ſame ſervices as the Donee held, *Cauſa patet.* If there be two Jointenants, and to the Heirs of one of them (*who hold, ut ſupra*) make a Gift in tail, the Donee ſhall hold of them both by the like Services, and yet the Freehold is no cauſe of the tenure. *Quære*, for ſome ſay that he that hath the Fee ſhall have the whole Tenure; for the Inheritance paſſeth only from him. If Tenant for life, and he in reverſion make a Gift in tail, *Quære* how he ſhall hold? If a Leaſe be made for life, the remainder in *Frankmarriage*, ſome think the Tenant for life ſhall hold by Fealty only, untill the fourth degree be paſt.

If there be Lord and Tenant by Fealty and twenty ſhillings, and the Tenant gives in Frankmarriage, to hold of him and his Heirs by Fealty only until the fourth degree be paſt, and after by twenty ſhillings and Chivalry, in that caſe after the fourth degree be paſt, he ſhall not have the twenty ſhillings, nor the Chivalry; for though he reſerved but Fealty until the fourth degree be paſt, yet it is an intire reſervation preſently, and the ſervices are in him although they be not to be performed untill the fourth degree be paſt, and Seiſin of the

the Fealty ſhall be a Seiſin of the reſt, and therefore the reſervation being entire, that is the reaſon that it is void for all, becauſe all cannot be reſerved upon the Gift in Frankmarriage.

Teſtament.

IF a man makes ſeverall Wills, of ſeverall dates, and dies, and the Executor of the laſt Will refuſeth before the Ordinary, yet the firſt Will is clearly defeated, and yet the refuſal is peremptory: but it is not ſo if there be two Executors, and one refuſeth before the Ordinary. If a *Femſole* makes her Will, and then marries, and he dies. *Quære*, if the Will be revoked.

Villain.

IF the Lord deviſeth Land to his Villain, he ſhall be enfranchiſed againſt the Heir, and yet he was a Villain to the Heir at the ſame time the deviſe took effect; but being the Lord had a power to enfranchiſe him, he ſhall be enfranchiſed. As if one delivers an Eſcrowl of Enfranchiſement to be delivered ſeven years after, the Lord dies, and then the Deed is delivered to the Villain, it is a good enfranchiſement. If a man makes a Leaſe for life, the remainder

to

to the right Heirs of *A.* who hath Iſſue, a Son who is a Villain by *Confeſſion* to the Feoffor, and the Feoffor dies, and *A.* dies, aud the Tenant for life dies, the Son of *A.* enters, he ſhall be enfranchized, and yet he was not enfranchized in the life of the Feoffor, but now he ſhall be ſaid in by him. So if a man deviſe that his Executors ſhall ſell his Land, and they ſell it to the Villain of the Teſtator, he ſhall be enfranchiſed againſt the Heir; for he comes in in the *Per* by the Teſtator.

If a *Fem* be endowed of a Villain in groſſe, and the Tenant in Dower and the Heir enter together into Land purchaſed by the Villain. *Quære* in whom the Freehold ſhall be. So if he had been a Villain to an Abbe and a Secular man; for his body is intire to every of them. And if the Grantee for life of a Villain, and he in reverſion of a Villain enter together into Land of the Villain, it ſeems that Tenant for life ſhall gain all, but ſome think that he in reverſion ſhall diſable him in an Action.

If Executors have a Villain that the Teſtator had, and enter into Land purchaſed by the Villain, it ſhall be Aſſetts notwithſtanding they have a Fee,

Fee, as Land in Fee deſcended to the Heir ſhall be aſſetts to a Chattle, *viz.* a Debt to a Stranger. And the reaſon why they ſhall have it to the uſe of the Teſtator is, becauſe they had it *in auter droit*, and ſo it ſhall be a *Perquiſite* unto the ſame right. So if a Guardian in Socage of a Mannor to which a Villain is regardant, enters into Land purchaſed by the Villain, it ſhall be to the uſe of the Infant. So if a Biſhop enters into Land purchaſed by a Villain, which he hath in right of his Church, the Land ſhall be to the ſame uſe, ſo is 42 *E.* 3. 24. But if one hath a Villain for years in his own right, he ſhall have a Fee in the Land purchaſed by the Villain. It was ſaid if a man be intitled to be Tenant by the Curteſie of a Villain, and enters into Land purchaſed by him, he ſhall be ſeiſed of the Land to his own uſe, and not in right of his Wife, becauſe he hath the Villain in his own right; but, *Quære*, if he were not intitled to be Tenant by Curteſie?

If the Lord of a Villain gives Land by Fine to the Villain, which is Land of Ancient Demeſne, the Lord reverſeth the Fine by *Diſceit*, ſome think the Manumiſſion is deſtroyed; for it doth not appear upon Record; other-

otherwiſe if he enfeoffs his Villain upon Condition, and enters for the breach. And if a Villain acknowledges an Action brought by *Baron & Fem*, that is no Enfranchiſement againſt the *Fem*; for it is but an Enfranchiſement in Law upon which ſhe is not examined.

The Tenant enfeoffs the Villain of the Lord and a Stranger, upon Colluſion, the matter is how the Lord may obtain the Ward without Dammages? For if he brings a Writ of *Ward*, the Villain ſhall be manumitted, and if he enters upon the Villain he avoids the Colluſion for ever, and ſhall retain the Land, but then he ſhall be Tenant in Common with the other, and ſo he can have no Writ of Ward for the other Moity.

If Tenant in tail of a Mannor to which a Villain is regardant makes a Leaſe for one and twenty years to the Villain, rendring a Rent according to the ſtatute, and dies within the term, if the Iſſue being remitted to the Freehold of the Villain may enter into the Mannor and out the Villain?

Upon a plea in Bar of an *Aſſize* the parties are adjourned, and after the Tenant pleads a Releaſe made after the

the *Darrein Continuance*, bearing date in a forreign County, and after at the *Venire fac.* return'd, the Tenant pleads that after the *Darrein Continuance* he hath purchaſed the Mannor to which the *Plaintiffe* is a Villain, he ſhall not have this plea; for he ſhall not delay thePlaintiff by his plea, but once, where the matter of fact happens *de puiſne temps*; for he is at no miſcheif if his plea be true: But in ſhewing a Record after he ſhall plead it if it be in the ſame Court. And here the Villain ſhall not be enfranchized; for the Plea was pleaded before, which now he ought to maintain: but if he anſwers his Villain *de Novo*, that is an Enfranchiſement.

Voucher.

THe youngeſt ſon of an Abator hath Land by deſcent by the cuſtom of Borough Engliſh, or by reaſon of an Eſtate tail made to his Father and a ſecond Wife, in a *Mortdanceſter* brought againſt him he ſhall vouch, notwithſtanding the Counterplea given by the Statute; for the Statute extends but to Heirs at common Law; and therefore if an Abator hath Iſſue,

two

two Daughters, and makes a Feoffment and dies, and one of them takes a Feofment, and an *Aſſize* is brought againſt her, ſhe ſhall vouch; for ſhe is not ſole Heir: but if ſhe had been ſole Heir, then cleerly ſhe ſhall not vouch, though ſhe doth not come to it as Heir. And if an Abator and a ſtranger being Tenants in a *Mortdanceſter*, vouch, they ſhall have the Voucher.

If Feoffee with Waranty to him, his Heirs and Aſſigns makes a Leaſe for life, the Tenant for life in a plea vouches the firſt Feoffor, and recovers in value Land held of the Feoffee, if the Feoffee ſhall have his Seignory? For if the Reverſion of the Land recovered be in the Feoffee, then he ſhall not avow, and if he ſhall not. *Quære*, if Leſſee for life ſhall vouch as Aſſignee, being that he hath not all the Eſtate; And it is cleer if the Feoffee had made a Leaſe for life, the remainder in Fee, the Leſſee ſhall vouch as Aſſignee, and if he recovers in value, the remainder ſhall be in him in whom it was before. 28 *Aſſ. p.* 18. 11 *Aſſ. p.* 3.

If the younger brother and a Stranger abate, and the Stranger dies, now a *Mortdanceſter* doth not lie; or if an Abator makes a Feoffment, and retakes

retakes an Eſtate to himſelf and another, and the other dies, the Voucher does not lie for him; and yet before, an *Aſſize of Mortdanceſter* and Voucher did lie.

If a Feoffment be made with Warranty to one, his Heirs and Aſſigns, the Feoffee makes a Feoffment over, the ſecond Feoffee enfeoffs the Son of the firſt Feoffee, he ſhall vouch; for he may be Aſſignee of his Father, being he does not come in as Heir. Lord by Eſcheat, Mortmain, or of a Villain, &c. ſhall not be ſaid Aſſignees.

Land is given to Husband and Wife, and to the Heirs of the Husband, he makes a Feoffment with Warranty and dies, the Wife brings her *Cui in vita*, the Feoffee vouches and recovers in value by reaſon of the Warranty, after the death of the Wife he ſhall vouch again by reaſon of the Warranty aforeſaid. So if a Woman brings a Writ of Dower, and the Feoffee vouches by reaſon of the Warranty, he ſhall vouch again after the death of the Wife, becauſe the Voucher and Recovery in value was onely in reſpect of the Freehold; but if he had once recovered in value of the Fee, he ſhould never vouch

vouch again by reaſon of the firſt *Warranty*; for he hath the effect of it, and alſo the Warranty is gone with the Eſtate. But if Tenant in *Frankmarriage* recovers in value, he ſhall vouch again; but it is otherwiſe of Tenant for life. If Tenant in tail, to him and his Heirs Females, the remainder to him in Fee, makes a Feoffment with Warranty and dies, the Heir Female recovers, and the Feoffee recovers over in value, he ſhall vouch again after the Eſtate tail is ſpent by reaſon of the firſt Warranty.

If the Tenant vouches, and at the *Sequat. ſub ſuo periculo* the Tenant and the Vouchee make Default, whereupon the Demandant hath Judgement to recover againſt the Tenant, and after he brings a *Scire fac.* againſt the Tenant to execute the Judgement, if the Tenant ſhall have a *Warrantia Chartæ* againſt the Vouchee? But if a ſtranger brings a *Præcipe quod reddat* againſt the Tenant, ſome think that he ſhall vouch; for by the firſt Voucher and the Judgement given againſt the Tenant the Warranty was not defeated, nor the poſſeſſion of the Tenant; but if the Tenant had judgement to recover in value againſt the Vouchee,

Vouchee, he ſhall never vouch again by reaſon of this warranty: for the warranty hath loſt its force, being he had Judgment to recover in value by reaſon of it; for if he ſhould recover again, he ſhould have 2 Recoveries upon one warranty. It was holden cleerly, that if the tenant hath Judgment againſt the Vouchee, he ſhall recover no land in value, but that the Vouchee had at the time of the Judgment. And *note* upon a *Summoneas ad Warrantizand.* if the Sheriff returns the Vouchee warned, and he makes default, the Tenant ſhall have a *Cap. ad val.* and recover in value, but if he returns, that he hath nothing, then after the *Sicut alias, & pluries*, a *Sequatur ſub ſuo periculo* ſhall iſſue, and there if the Vouchee makes default he ſhall not have Judgement to recover in value; for the Warranty is not confeſſed, and it is uncertain whether he had any thing, but in the *Cap. ad val.* it appears that he has Aſſetts.

A. ſeiſed of two Acres at Common Law, and one in Borough Engliſh, and makes a Gift in tail to a Stranger of one of the two Acres, and dies, the Donee is impleaded, and vouches the eldeſt Son, and recovers in value the other Acre out of his poſſeſſion (as he ſhall do in this caſe, being he vouches

him alone, and not the youngeſt, where the eldeſt hath aſſetts) the queſtion is if he be impleaded for that Acre he hath recovered, if he ſhall vouch the eldeſt and the youngeſt? If that Acre in Borough Engliſh ſhall be lyable by reaſon of the ſaid Warranty in Law, being it is not the Warranty which deſcends, but the Warranty in Law commenceth firſt in the Eldeſt Son; for the Recovery in value ſhall be ſaid in *lieu* of the firſt Land given, yet it is always to be intended (having regard to the eſtate of the Reverſion deſcended from the Father) the Reverſion left in the Eldeſt Son, and then the Acre of the youngeſt is not lyable to that Warranty. So if the Father had given a Seignory to the Eldeſt Son in tail, and died ſeiſed of Land in *Borough Engliſh*, which deſcended to the youngeſt Son, and after the Tenancy eſcheats, the Eldeſt being impleaded vouches himſelf to ſave the Intail; but if the Land of the youngeſt ſhall be lyable, is the queſtion?

Leſſee for life, the remainder to the right Heirs of *A*, who is dead, having a Daughter, his Wife *enſeint* with a Son, the Leſſor warrants the Land in *forma predicta*, the Son is born, the Daughter cannot vouch by reaſon of

the Warranty; for the Warranty is a thing executory which cannot be *deraigned*, but by the right Heirs of *A.* For if a Feoffment be made to the Son with Warranty, and he dies without Iſſue, and the Land comes from the Unkle to the Father, he cannot take advantage of this Warranty as Heir to his Son; ſo if *Poſſeſſio Fratris* makes the Siſter Heir, ſhe ſhall not vouch, 35 *H.* 6. 34. *Danby*; but he ſhall be voucht as Heir for the poſſeſſion, ſo ſhall the Father, ſo ſhall the youngeſt Son in *Borough Engliſh*, but ſhall not vouch, Vide *Fitzh. Voucher* 94. 35 *H.* 6. 33. If Land be given to two brothers in Fee with Warranty to the eldeſt, the eldeſt dies having Iſſue, and the youngeſt dies without Iſſue, the Iſſue of the Eldeſt being his Heir, and he enters, he ſhall not take advantage of this Warranty by *Voucher* or *Rebutter*; for the Warranty was void, having regard to the Survivor, becauſe his Title hath relation before the Warranty.

If the Eldeſt Son is voucht as Heir to the Warranty, and the youngeſt as Heir in Borough Engliſh, and the Eldeſt voucheth over, if the Eldeſt or the youngeſt ſhall have the Recompence in value? It would be unrea-

ſonable, that the eldeſt ſhould have it, for he loſt nothing, for by the law the tenant cannot ſue Execution againſt the Vouchee, untill the demandant hath ſued execution againſt him, and in this caſe execution was never ſued againſt the Eldeſt, for he hath no land, and the youngeſt hath not the warranty by deſcent, (though he hath the land) and ſo he cannot vouch, and therefore it is hard he ſhould be bard by it.

Waſt.

LAnd is given to *Baron & Fem*, and to a third perſon, the third perſon releaſeth the *Fem* all his right, and the *Baron & Fem* makes a Leaſe of the whole for yeares, and brings a writ of Waſt againſt the Leſſee.

The Leſſee is not puniſhable in Waſt if a houſe falls that was ruinous at the time of the demiſe, and he may cut Trees to repair it, ſo he may do if the Leſſor covenants to repair it, *vid.* 12. *H.* 8. 1. If a houſe with land is let, upon which is a Wood without impeachment of waſt for the houſe, yet if the houſe becomes ruinous, he may cut timber for the reparation, and a *Leſſee* may take timber for *fier-boot*, if there be no other wood. *quod vid.* 21. *H.* 6.

H. 6. 47. If a man makes a leaſe upon condition, or that the *Leſſee* is bound in an obligation not to do waſt, and that his eſtate ſhall ceaſe : If a Stranger commits Waſt, that is no forfeiture of the Leaſe, for the condition extends only to the perſon of the *Leſſee*. *vid.* 3. *H.* 6. 17. But if a ſtranger commits Waſt upon the *Leſſee* for years, or *Guardian in Chivalry*, they ſhal render treble and ſhall loſe the *ward*, but *Guardian in Socage* ſhall not be puniſht for waſt of a ſtranger, for the heir himſelf ſhall have an action.

If a Leaſe is made for life, the *Leſſor* dies having two Sons by divers venters, the eldeſt grants to the *Leſſee* that he ſhall be diſpuniſht of waſt, yet that ſhall not bind the youngeſt, for he does not claim as heir to his brother, but as an heir to his father, who was laſt actually ſeiſed.

Fem tenant for life, the remainder for years to I. S. who marries with the *Fem*, and Commits waſt. *quære*, if the land be loſt? If tenant for life makes a leaſe for years, and after enters upon the termor, and commits waſt, and the Leſſor recovers, the *Leſſee* ſhall loſe his term. A man ſhall not be puniſhed for comming on the land to ſee if waſt be committed.

The heir makes a Leaſe for years, waſt is committed, the wife recovers in Dower, the heir ſhall have an action of waſt in the *tenuit*.

A man makes a leaſe for twenty yeares without impeachment of Waſt, and the Leſſor confirmes for forty years, the Leſſee ſhall be diſpuniſht for twenty years

A man makes a leaſe rendring rent on condition, that if the rent be behind, that the Leſſor ſhall reenter and retain until he be ſatisfied the rent out of the profits, the *Leſſor* doth enter and a ſtranger commits waſt, and then the *Leſſor* is ſatisfied of the rent, if the waſt be puniſhable.

If one doth deviſe his lands which he hath for years and dies, the Executors commits waſt, and then agree to the deviſe, an action of waſt lies againſt them, notwithſtanding the relation; So if Leſſee for years grants his term upon condition, and the grantee commits waſt, and the *Leſſee* for years enter for the condition broken, yet waſt lies againſt the grantee.

Where a man hath election to take two eſtates, his committing of waſt will be a determination of his election.

If there be *Leſſee* for life, the remainder for life, and the *Leſſor* grants the

the reverſion to him in remainder, *quære*, if he ſhall have an action of waſt? If Tenant for life makes a leaſe for years, and enters and commits waſt, the tenant for yeares leaſes his term, waſt by the aſſignee of an infant or *fem Covert* ſhall take away the ſpecial right of Infancy Coverture or condition, but otherwiſe if it had it been made by themſelves.

Warranty.

GRandfather Father and Son, the Grandfather makes a leaſe of an Acre for life, and dies, the Father being tenant in taile, diſcontinues it in Fee with warranty, and dies, the tenant for life dies, the Son enters into the Acre after his death, and brings a *Formedon*, the warranty of the Father with this Aſſets ſeemes no barr.

The diſcontinuee of a tenant in tail makes a Feofment on condition, and a warranty collateral is made to the Feoffee of the diſcontinuee, the diſcontinuee enters for the condition broken, the iſſue hath no remedy againſt him.

If a Collaterall Warranty deſcends within a year upon him that hath Title to enter for *Mortmain*, he cannot enter after; for if he himſelf had re-

leaſed he could not have entred, and the Warranty will bind him as well as his Releaſe: but *Quære*, if a collaterall Warranty extends to a Title of Entry?

If a man deviſes Land with Warranty, that is void; becauſe the Father himſelf was not bound.

A Warranty made to a Diſſeiſor is not deſtroyed by the Releaſe of the Diſſeiſee.

A Collateral Warranty ſhall not bar Execution of a Recovery in value; for it is but a Title, to which a Warranty does not extend no more than to bar a Title of Entry; for conſent to a Raviſher or Mortmain, alſo Conditions and Titles are always ſaid to be in poſſeſſion as a Rent is, and then a Warranty to the Tenant of the Land will not extinguiſh them.

Lord by Eſcheat ſhall not vouch by reaſon of a Warranty, if a Seignory be granted with Warranty, and a Tenancy Eſcheat, the Warranty ſhall not extend to it. Vide *Fitzh.* 18. *Voucher.*

Father and Son and a third perſon are Jointenants, the Father makes a Feofment of all with Warranty, and dies, the Son dies, the third ſhall have an Aſſize of but one part by ſome, and yet the warranty commences by Diſſeiſin,

ſin, as to the Son, but yet the Survivor cannot deny but that this Warranty is collaterall; for he comes not under the eſtate of the other. If a Leaſe be made for years to the Grandfather, remainder to the Father for life, remainder to the Son in Fee, the Grandfather enfeoffs with Warranty, it comences by diſſeiſin to the Father, and collateral to the Son; for the Feofment was not a diſſeiſin to the ſon. If the Father be Leſſee for years, remainder for life to the ſon, remainder over for life, remainder in Fee to the Son, the Father enfeofs with Warranty, it comences by diſſeiſin as to the ſon for the Freehold, but for the Fee tis collateral. *Quære* by ſome: in all caſes every man ſhal avoid a Warranty which comences by diſſeiſin. vid. *Fitz. War.* 28.

If a Leaſe for life be made, remainder for years with Warranty. *Quære*, if this Warranty will benefit him in remainder, being the precedent eſtate is of another nature.

If a man makes a Leaſe for life on Condition that if the Leſſee doth ſuch an act, that the Leſſee ſhall have Fee, and warrants the Land *in forma prædicta*, that Warranty extends to the Fee, but if the Feoffor dies, and then the Condition is performed, then if it be available is the Queſtion? being the Leſſor

was

was not bound to Warranty during his life, and then the Warranty which was annext to the Freehold is gone; for the greater eſtate drowns the leſſer. And to prove that the greater drowns the Warranty, it was ſaid if Tenant in tail be with Warranty to him, his Heirs and Aſſigns, his Feofee in Fee ſhall not be ſaid aſſignee, nor vouch, becauſe he hath not any part of the Eſtate tail. It was alſo ſaid, that if the condition had been performed in the life of the Leſſor, that the Warranty would not extend to it; for it muſt be annext to ſomething in poſſeſſion. But ſome take a difference, that if in the firſt caſe the firſt Leaſe had been for years, that the Warranty could not extend to the remainder, becauſe the firſt eſtate was but for years, and of another nature, but it would be otherwiſe in a Leaſe for life. And it was ſaid if a Leaſe for years be made, remainder in Fee with Warranty, he in remainder can't take advantage of the Warranty, becauſe he was not privy to the firſt deed, and then he cannot take as an immediate Warranty, becauſe the firſt Eſtate was of another nature, a reverſion deſcends to *Baron & Fem* Leſſees for life as to the Iſſues of two parceners, the Husband dies, the wife ſhall have the whole Freehold as Survivor, and the Fee

ſhall be executed for a moity, becauſe the other moity goes another way, *ſc.* to the Heirs of the Husband, and he ſhall *dereign* the Warranty annexed in *Fait* to the firſt eſtate for the moity, and not for the other moity, becauſe the Fee is executed. If Land be bargained & ſold by Indenture in Fee with warranty, & the Indenture is delivered, and after inrolled within ſix months, if he ſhall vouch, *Quære*, becauſe the nature of a Covenant is, that it ought to take effect preſently by the delivery of the deed, and then the Warranty was void, becauſe the Land did not paſs at that inſtant, and though the Inrollment makes it to paſs *ab initio*, yet the relation ſhall not make a void Warranty good. To which it was ſaid, if one makes a Feofment with a Letter of Atturny, and warranty is in the deed, by the delivery the Warranty ſhall be good, and yet the deed was delivered before.

If a gift in tail be made with warranty to a man, his Heirs and Aſſigns, and he makes a Feofment and dies, with Iſſue in a *Formedon in Reverter*, the warranty ſhall not be a bar, notwithſtanding the book of the 39 & 45 E. 3. 4. If the Lord confirms the eſtate of the Tenant with warranty, and after the Tenant ceaſes, the warranty ſhall not be a bar in a *Ceſſavit*

ſavit, notwithſtanding the Seignory which was in *Eſſe* before the warranty made was the conveyance to his action, becauſe the action ariſes upon an after cauſe. Tenant by the curteſie of a Seignory whereof a Tenancy eſcheat make a Feofment with warranty, if it ſhall be a bar to the Iſſue without Aſſets? *Quære.*

A *Fem* which hath a Rent Charge in Fee marries with the Tenant of the Land, a ſtranger releaſe to the Tenant with warranty, the warranty can't extend to the Rent, becauſe the Rent was ſuſpended by act in Law, and the wife if the Husband dies, nor the Heir of the wife, living the Husband, cannot have any action for the rent upon a Title before the warranty made; for if the Heir of the wife brings a *Mortdanceſter*, that is *de puiſne temps*, and after the warranty; ſo if the Grantee of a rent grant it on condition to the Tenant, who makes a Feofment of the Land with warranty, that warranty can't extend to the rent and yet the Land was diſcharg'd of the rent; but all the actions ſhall be took as the cauſe of action ariſes afterward; for if the condition be broken, and after an action be given, that ſhall ariſe after the warranty made: but if a *Fem* which hath a rent marries with the Tenant, who makes a Feoffment of the Land with warranty

warranty and dies, and the wife brings a *Cui in vita* of the rent, there the Feoffee ſhall vouch as of Land diſcharged. So if Tenant in tail of a rent purchaſes the Land, and makes a Feofment, and the Feoffee aliens with warranty, or if Tenant in tail of a rent releaſes to the *ter Tenant* who aliens over with Warranty, if the Iſſue brings a *Formedon* he ſhall vouch as of Land diſcharged. So if an Infant hath a rent, and diſſeiſes the Tenant, and is diſſeiſed by another, who aliens with warranty, that warranty ſhall extend to the rent, becauſe in all theſe caſes the Land is diſcharg'd of the rent at the time of the Feofment in Fee; and the action is conceived upon a Title *Paramount* to the warranty. But if a man grants a Rent Charge out of Land to commence at *Mich.* and the Tenant makes a Feoffment with warranty, or if a *reſcous* be made, and after the Tenant makes a Feofment of the Land with warranty, as it is in 31 E. 3. in a *Warrantia chartæ*, there the warranty ſhall not extend to the rent, becauſe the rent was not *in eſſe* at the time, but if upon a *reſcous* ſhe brings an *Aſſize*, and after is nonſuited, and after the Tenant makes a Feofment of the Land with warranty, that warranty will extend to the Rent, *Quod nota.*

A man dies ſeiſed of an Acre in Borough Engliſh in tail, having three Sons, the youngeſt enters, and makes a leaſe to the ſecond for years, who makes a Feofment with warranty, and dies without Iſſue, the yongeſt dies without Iſſue, the eldeſt brings a *Formedon*, if he ſhall be barred by the warranty? It ſeems though the warranty deſcends upon the eldeſt where it was a diſſeiſin to the youngeſt, yet when the right of the Land comes unto him he ſhall ſay that the warranty comences by diſſeiſin, becauſe he is now privy to the warranty, and to the eſtate; for if the Father ſeis'd in fee makes a leaſe to the Grandfather for years, who makes a Feofment in Fee with warranty and dies, and the Father dies, that warranty ſhall not be a bar to the ſon, becauſe it comenc'd by diſſeiſin to him whoſe Heir he is. And if a man hath Iſſue two Sons, the youngeſt makes a Leaſe for years to the Father, who makes a Feofment with warranty and dies, and after the Eldeſt dies without Iſſue, and the warranty deſcends upon the youngeſt, that ſhall be no bar, becauſe it comences by diſſeiſin; and though the Land doth come immediately to him upon whom the warranty deſcends, as it was in the principall caſe, or although the warranty

doth

doth not deſcend upon the Tenant of the land immediately as heir to him that made the warranty, yet all is one Warranty which commences by diſſeiſin, and wrong is made to him in the interim, upon whom the warranty deſcends after, although that wrong was not a diſſeſin to him, yet it is a warranty which commences by diſſeiſin; As if an Anceſtor Collateral to the Donor, deſſeiſe the Donee, to the intent to make a feofment, with warranty, which is done accordingly, and the warranty deſcends upon the donor, and after tenant in tail dies without iſſue, in a *formedon in reverter*, the warranty ſhal be no bar, becauſe it commences by diſſeiſin to the tenant in tail, at which time wrong was made to him in reverſion, and therefore he ſhal ſay that the warranty commences by deſſeiſin, *tamen vid.* 30. E. 3. 12. But if a man makes a feofment with warranty and dies, which is a diſſeiſin to a ſtranger, the heir of the Feoffor (if he hath not the right of the land deſcended to him after) ſhall be vouched for the warranty, then in the principal caſe, if the eldeſt cannot ſay that the warranty commences by diſſeiſin, yet it ſhall be lineal againſt him, for by poſſibility he might have made

[illegible] to him that made the [illegible], for the land doth descend to the youngest heir, as well as to the youngest Son, and so to the youngest unkle, for the reason is all one, for the young'st brother shal be in as youngest Son to the common Ancester: but some say there is not any reason in these two cases.

If tenant in tail is desseised, and release to the disseisor with warranty, and after is attained of felony, and hath a Charter of pardon, and dies; it [illegible]ms it is a discontinu[illegible]ce, for if he had purchased land after his Char[illegible], it would descend to his heir, which proves that the blood betwixt him and his heir [illegible] corrupt, as it is between him and his Ance[illegible] then the warranty being *in esse* at the time [illegible] death, there is no impediment, but that [illegible] descend: But if tenant in tail, who hath a [illegible] annexed to his estate, be attain[illegible] of felt[illegible] executed, many think his issue [illegible] not inherit the voucher for the warranty [illegible] the land; for the warranty is out [illegible] *de Donis Condit*, which [illegible] of [illegible] tenements which are given [illegible] condition [illegible] *Lowd.* thinks the contrary, for by [illegible] equity [illegible] statute, it is pres[illegible] as well [illegible] Charters [illegible] *H.* 6. 20. *per M*[illegible] 60. *b. Coll.* for Charters.

Feoffee with [illegible] by the Feoffor who dies se[illegible] the issues who brings a [illegible] oyned upon the meere [illegible] barred, for if the Feoffee [illegible] impleaded [illegible] tranger, shal *arraine* the [illegible] against [illegible] issue, is the question.

MVSEVM BRITANNICVM